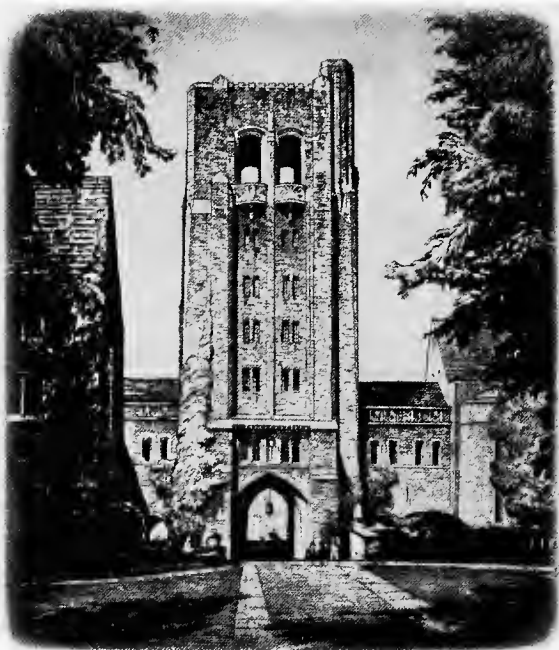


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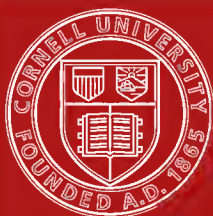
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CITIZENSHIP

OF THE

UNITED STATES

BY

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UNITED STATES.

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PREFACE.

In the more restricted meaning of the term, a citizen is a person who has the right to vote for public officers and on public measures, and who is qualified to hold offices in the gift of the people.

But this definition is too narrow, for minors—who are not permitted to vote—and women—who are allowed to exercise the franchise in only a few of the states—are citizens. In the broad sense of the word, citizens are “the people,” the members of the state or nation, including men, women, and children. In the United States they are the sovereign power.

There are two kinds of citizenship in this country,—state and national,—each distinct from the other. A person may be a citizen of a state, and not a citizen of the United States. He may be a citizen of the United States without enjoying the rights and privileges conferred by state citizenship. To be a citizen of the United States, it is only necessary that a person be born or naturalized in the United States. To be a citizen of a state, a man must reside within the state. United States citizenship does not give the right to vote. The Constitution does not guarantee a citizen this right. The right to vote is a right conferred and regulated by state laws. Even in regard to the choice of Representatives in Congress and electors of President of the United States, this matter is left entirely in the hands of the states. And in many of the states the franchise is granted to persons not citizens, either of the state or of the United States. For in-

stance, in New Hampshire the ballot is given to male inhabitants of the state, and in Alabama and some other states, to male aliens who have declared their intention to become citizens. A state may go to extraordinary lengths in determining the qualifications of its voters. It can establish an educational or property qualification. It can restrict the right to either sex, or give it to both. The United States circuit court, in *United States v. Anthony*, in 11 Blatchf. 205, Fed. Cas. No. 14,459, asserted that a state might provide, without violating any right derived from the Constitution of the United States, that no person having gray hair, or who has not the use of all his limbs, shall be entitled to vote. But the Constitution declares that no citizen of the United States can be excluded from the enjoyment of the franchise on account of "race, color, or previous condition of servitude."

Citizenship, always a matter of importance, involving, as it does, the political relationship between the individual and the sovereign state to which he belongs, has become of increasing importance in the United States with the development of this nation as a world power. The wonderful expansion of our commerce which has marked the past decade, and the recent additions to our territory, have made inevitable a broader contact with the nations of the world, and have complicated the relations of our citizens with the governments and citizens of other countries.

This has made necessary to the statesman, to the lawyer, to the capitalist, and to the intelligent student, a clearer understanding of the correlative rights and duties of citizenship,—the right of the citizen to claim at the hands of the government protection of person and property abroad, and the right of the government to require from the citizen the performance of the duties pertaining to citizenship.

Within the past five years the question whether, under our law, children born in the United States to alien parents are citizens of the United States,—a question productive of much discussion, and on which, at an earlier period, considerable difference of opinion existed,—has been authoritatively settled by a decision of the Supreme Court of the United States. *United States v. Wong Kim Ark*, 169 U.S. 649, 42 L. ed. 890, 18 Sup. Ct. Rep. 456. And the various novel and important questions raised by our recent acquisitions of territory are exhaustively discussed by the same court in the *Insular Cases*, 182 U.S. 1-244, 45 L. ed. 1041-1088, 21 Sup. Ct. Rep. 743.

An experience of ten years in dealing with the multiform questions relative to the subject, which arise in the work of the Department of State, has emphasized the great need of a comprehensive and convenient reference work on the subject of citizenship of the United States. The law of citizenship is now only to be found scattered through the acts of Congress, the decisions of the courts, and the rulings of the Executive as they appear in state papers and diplomatic correspondence, many of the latter being unpublished and inaccessible. From these various sources the writer has sought to gather and arrange in a logical and convenient form, under one index, the law relating to the subject. The work has not been done with a view to establishing any preconceived notion of what the law should be, but with the design of showing what the law actually is.

This work will treat only of Federal citizenship.

WASHINGTON, D. C., December, 1903.

FREDERICK VAN DYNE.

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ABBREVIATIONS.

- MSS. Dom. Lett.** Manuscript Domestic Letters.
MSS. Dip. Inst. Manuscript Instructions to Diplomatic Officers.
For. Rel. Foreign Relations of the United States.
Int. Law Dig. International Law Digest.
Int. Arb. International Arbitrations.
Ops. Atty. Gen. Opinions of Attorneys General.
Rev. Stat. Revised Statutes of the United States.
U. S. Comp. Stat. Compiled Statutes of the United States.
L. ed. Lawyers' Edition of the U. S. Supreme Court Reports.
L. R. A. Lawyers' Reports Annotated.
Fed. Federal Reporter.

PART I.

CITIZENSHIP BY BIRTH.

PART I.

CITIZENSHIP BY BIRTH.

CHAPTER I.

CITIZENSHIP BY BIRTH IN THE UNITED STATES.

1. Common-law doctrine.
2. Civil rights act and 14th Amendment are declaratory of common-law rule.
3. Children born in United States of alien parentage.
4. Dual citizenship of children of aliens born in United States; election of nationality.

1. **Common-law doctrine.**—There is no uniform rule of international law covering the subject of citizenship. Every nation determines for itself who shall, and who shall not, be its citizens. According to the law of some states, citizenship by birth depends upon the place of birth. This is the *jus soli*, or common-law doctrine. According to the law of other states, citizenship depends upon the nationality of the parents. This is the *jus sanguinis*,—sometimes erroneously termed the doctrine of the law of nations, because it obtains in many countries. In some countries both elements exist, the one or the other, however, predominating. By the law of the United States, citizenship depends, generally, on the place of birth; nevertheless the children

of citizens, born out of the jurisdiction of the United States, are also citizens. The existence of these two doctrines, side by side, in this country, is the cause of much of the confusion which has arisen in relation to citizenship in the United States. Formerly, the lack of any definition of citizenship in our fundamental law and in our statutes further complicated the matter; and the somewhat ambiguous language employed in supplying this defect rendered it a debatable question whether or not it was intended to declare the common-law doctrine.

The Constitution of the United States, while it recognized citizenship of the United States in prescribing the qualifications of the President, Senators, and Representatives, contained no definition of citizenship until the adoption of the 14th Amendment, in 1868; nor did Congress attempt to define it until the passage of the civil rights act, in 1866. 14 Stat. at L. 27, chap. 31, U. S. Comp. Stat. 1901, p. 1268. Prior to this time the subject of citizenship by birth was generally held to be regulated by the common law, by which all persons born within the limits and allegiance of the United States were deemed to be natural-born citizens thereof.

It appears to have been assumed by the Supreme Court of the United States in the case of *Murray v. The Charming Betsy* (1804) 2 Cranch, 64, 119, 2 L. ed. 208, 226, that all persons born in the United States were citizens thereof. Chief Justice Marshall said in that case: "Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can divest himself absolutely of that character otherwise than in such manner as may be prescribed by law, is a question which it is not necessary at present to decide." See also *Inglis v. Sailor's Snug Harbor*, 3 Pet. 99, 7 L. ed. 617, and *Shanks v. Dupont*, 3 Pet. 242, 7 L. ed. 666.

In *M'Creery v. Somerville* (1824) 9 Wheat. 354, 6 L. ed.

109, which concerned the title to land in the state of Maryland, it was assumed that children born in that state of an alien were native-born citizens of the United States.

This matter was elaborately considered in the case of *Lynch v. Clarke*, 1 Sandf. Ch. 583, decided in 1844 in New York. In that case one Julia Lynch, born in New York in 1819, of alien parents, during their temporary sojourn in that city, returned with them the same year to their native country, and always resided there afterwards. It was held that she was a citizen of the United States. After an exhaustive examination of the law, the court said that it entertained no doubt that every person born within the dominions and allegiance of the United States, whatever the situation of his parents, was a natural-born citizen; and added that this was the general understanding of the legal profession, and the universal impression of the public mind.

The executive departments of our government have repeatedly affirmed this doctrine.

Mr. Marcy, Secretary of State, in 1854, in an instruction to Mr. Mason, United States Minister to France, said: "In reply to the inquiry which is made by you, . . . whether 'the children of foreign parents born in the United States, but brought to the country to which the father is a subject, and continuing to reside within the jurisdiction of their father's country, are entitled to protection as citizens of the United States,' I have to observe that it is presumed that, according to the common law, any person born in the United States, unless he be born in one of the foreign legations therein, may be considered a citizen thereof until he formally renounces his citizenship." Mr. Marcy to Mr. Mason, June 6, 1854, MSS. Inst. France.

Attorney General Black, in 1859, held that "a free white person born in this country of foreign parents is a citizen of the United States." 9 Ops. Atty. Gen. 373.

Attorney General Bates, in 1862, held that a child born in the United States of alien parents who have never been naturalized is, by the fact of birth, a native-born citizen of the United States, entitled to all the rights and privileges of citizenship. 10 Ops. >Atty. Gen. 382.

And in the same year Attorney General Bates, in the celebrated opinion given by him to Mr. Chase, the Secretary of the Treasury, on the citizenship of free men of color born in the United States, said: "As far as I know, Mr. Secretary, you and I have no better title to the citizenship which we enjoy than the 'accident of birth,'—the fact that we happened to be born in the United States. And our Constitution, in speaking of natural-born citizens, uses no affirmative language to make them such, but only recognizes and reaffirms the universal principle, common to all nations, and as old as political society, that the people born in a country do constitute the nation, and, as individuals, are natural members of the body politic. If this be a true principle (and I do not doubt it), it follows that every person born in this country is, at the moment of birth, *prima facie* a citizen; and he who would deny it must take upon himself the burden of proving some great disfranchisement strong enough to override the 'natural-born' right as recognized by the Constitution in terms the most simple and comprehensive, and without any reference to race or color, or any other accidental circumstance. That nativity furnishes the rule, both of duty and of right as between the individual and the government, is a historical and political truth so old and so universally accepted that it is needless to prove it by authority." 10 Ops. Atty. Gen. 394.

It is beyond doubt that, before the enactment of the civil rights act of 1866 (Rev. Stat. § 1992, U. S. Comp. Stat. 1901, p. 1268), or the adoption of the constitutional amendment, all white persons, at least, born within the sovereignty of

the United States, whether children of citizens or foreigners, excepting only children of ambassadors or public ministers of a foreign government, were native-born citizens of the United States. *United States v. Wong Kim Ark*, 169 U. S. 674, 42 L. ed. 900, 18 Sup. Ct. Rep. 456.

2. Civil rights act and 14th Amendment are declaratory of common-law rule.—The civil rights act, adopted April 9, 1866 (Rev. Stat. § 1992, U. S. Comp. Stat. 1901, p. 1268), contains this language: "All persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States."

The 1st section of the 14th Amendment to the Constitution, adopted in 1868, declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

These two definitions, which are practically identical, are declaratory of the common law.

The clause in the civil rights act defining citizenship was proposed in the Senate. In the course of the debate in that body, Senator Trumbull, the chairman of the judiciary committee, who drew the bill, said: "It is competent for Congress to declare, under the Constitution of the United States, who are citizens. If there were any question about it, it would be settled by the passage of a law declaring all persons born in the United States to be citizens thereof. That this bill proposes to do." Cong. Globe, 1st Sess. 39th Congress, pt. 1, p. 475.

In the discussion Senator Morrill asked the following question, to which no reply was made: "As matter of law, does anybody deny here, or anywhere, that the native-born is a citizen, and a citizen by virtue of his birth alone?" Id. p. 570.

In reply to the remarks of Senator Henderson, of Missouri, in

regard to the various amendments which had been proposed to the 1st section of the act, Senator Trumbull said: "The senator from Missouri and myself desire to arrive at the same point precisely, and that is to make citizens of everybody born in the United States who owe allegiance to the United States. We cannot make a citizen of the child of a foreign minister who is temporarily residing here. There is a difficulty in framing the amendment so as to make citizens of all the people born in the United States, and who owe allegiance to it. I thought that might, perhaps, be the best form in which to put the amendment at one time, 'that all persons born in the United States, and owing allegiance thereto, are hereby declared to be citizens;' but, upon investigation, it was found that a sort of allegiance was due to the country from persons temporarily residing in it whom we would have no right to make citizens, and that that form would not answer. Then it was suggested that we should make citizens of all persons born in the United States not subject to any foreign power or tribal authority. The objection to that was, that there were Indians not subject to tribal authority, who yet were wild and untamed in their habits, who had by some means or other become separated from their tribes, and were not under the laws of any civilized community, and of whom the authorities of the United States took no jurisdiction. . . . Then it was proposed to adopt the amendment as it now stands,—that all persons born in the United States, not subject to any foreign power, excluding Indians not taxed, shall be citizens." *Id.* p. 572.

When the bill came back to the House with the amendments made by the Senate, Mr. Wilson, of Iowa, chairman of the house judiciary committee, said: "The 1st section of the bill contains the following declaration concerning citizenship: That all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be

citizens of the United States. . . . This provision, I maintain, is merely declaratory of what the law now is." He cited, among other authorities, the following quotation from Rawle on the Constitution, p. 80: "Every person born within the United States, its territories or districts, whether the parents are citizens or aliens, is a natural-born citizen in the sense of the Constitution, and entitled to all the rights and privileges appertaining to that capacity." *Id.* pt. 2, pp. 1115, 1117.

Mr. Thayer, of Pennsylvania, said that the bill was an enactment simply declaring that all men born upon the soil of the United States shall enjoy the fundamental rights of citizenship. *Id.* p. 1151.

Mr. Broomall said: "The first provision of the bill declares that all persons born in the United States, and not subject to any foreign power, are citizens of the United States. As a positive enactment, this would hardly seem necessary. Even as a declaration of existing law, a proposition that at most can only be said to embrace the true meaning of the word 'citizen' would seem to find its more appropriate place in the elementary treatises upon law, rather than upon the statute books. What is a citizen but a human being who, by reason of his being born within the jurisdiction of a government, owes allegiance to that government?" *Id.* p. 1262.

The 14th Amendment was pending before the same Congress which enacted the civil rights law. Objections were made to that law, and great doubt was expressed as to its validity. To obviate the objections which had been raised to its 1st section, and to place the common rights of American citizenship under the protection of the national government, it was deemed wise to incorporate the declaration in the fundamental law. The phraseology adopted in the amendment is somewhat different from that of the civil rights act. For the qualifying phrase,

“not subject to any foreign power,” is substituted the affirmative one, “subject to the jurisdiction thereof.” The words, “excluding Indians not taxed,” are omitted as unnecessary, such persons not being deemed to be “subject to the jurisdiction” of the United States. The amendment also declares that all persons who are citizens of the United States by reason of their birth or naturalization are also citizens of the state in which they reside.

The amendment as it came from the House contained no definition of citizenship. Senator Howard, of Michigan, proposed to insert such a definition. He said: “The first amendment is to § 1, declaring that ‘all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside.’* . . . This amendment which I have offered is simply declaratory of what I regard as the law of the land already,—that every person born within the limits of the United States, and subject to their jurisdiction, is, by virtue of natural law and national law, a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the government of the United States, but will include every other class of persons. It settles the great question of citizenship, and removes all doubt as to what persons are, or are not, citizens of the United States. This has long been a great *desideratum* in the jurisprudence and legislation of this country.” Cong. Globe, 1st Session, 39th Congress, pt. 4, p. 2890.

Senator Cowan asked whether the child of the Chinese immigrant, born in California, was a citizen.

*The amendment as finally adopted contained the language proposed by Senator Howard, except that the words “or naturalized” were inserted, without objection or discussion, at the suggestion of Mr. Fessenden.

Senator Conness said that it was proposed by the amendment to declare that the children begotten of Chinese parents in California shall be citizens. He added: "We have declared that by law; now it is proposed to incorporate the same provision in the fundamental instrument of the nation. I am in favor of doing so. I voted for the proposition to declare that the children of all parentage whatever, born in California, should be regarded and treated as citizens of the United States." Id. p. 2891.

Mr. Doolittle said that the civil rights act was the forerunner of the constitutional amendment, which was brought forward to give validity to the statute. Id. p. 2896.

Mr. Johnson said: "The Constitution as it now stands recognizes a citizenship of the United States. . . . But there is no definition in the Constitution as it now stands, as to citizenship. Who is a citizen of the United States, is an open question. The decision of the courts, and the doctrine of the commentators, is that every man who is a citizen of a state becomes *ipso facto* a citizen of the United States; but there is no definition as to how citizenship can exist in the United States except through the medium of citizenship in a state. Now, all that this amendment provides is that all persons born in the United States, and not subject to some foreign power,—for that, no doubt, is the meaning of the committee who have brought the matter before us,—shall be considered as citizens of the United States. That would seem to be, not only a wise, but a necessary, provision. If there are to be citizens of the United States entitled everywhere to the character of citizens of the United States, there should be some certain definition of what citizenship is, what has created the character of citizen as between himself and the United States; and the amendment says that citizenship may depend upon birth, and I know of no better way to

give rise to citizenship than the fact of birth within the territory of the United States, born of parents who at the time were subject to the authority of the United States." Id. 2893.

These quotations from the debates in Congress plainly show the intention of the framers of the civil rights act, and of the amendment to the Constitution, to reaffirm the fundamental principle of citizenship by birth.

3. Children born in United States of alien parentage.—The Federal courts have almost uniformly held that birth in the United States, of itself, confers citizenship. In two cases the courts have used language which has been relied upon in support of a contrary view. These will now be considered.

In delivering the opinion of the court in the *Slaughter-House Cases*, 16 Wall. 73, 21 L. ed. 408, Mr. Justice Miller said: "The phrase, 'subject to the jurisdiction,' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states born within the United States."

This has been cited in support of the contention that the children born in this country to aliens are not citizens of the United States. It is to be observed, however, that this is only a *dictum*. The question was not involved in the decision of the case before the court. The classing together of foreign ministers and consuls, when it was at the time well-settled law that consuls, as such, and unless expressly invested with a diplomatic character, are not entitled, by the law of nations, to the privileges and immunities of ambassadors, shows that the statement was not formulated with the same care and exactness as if the case before the court had called for a precise definition of the phrase. And the fact that neither Mr. Justice Miller, nor any of the justices who took part in the decision above referred to, understood the court to be committed to the view that children born in the United States of alien parents were excluded from the operation of the

first sentence of the 14th Amendment, is shown by the unanimous opinion of the court in the case of *Minor v. Happersett*, 21 Wall. 162, 22 L. ed. 627, decided but two years later, when all these judges but Chief Justice Chase were still on the bench. The court said: "Allegiance and protection are, in this connection [in relation to citizenship], reciprocal obligations. . . . At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country, of parents who were its citizens, became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further, and include as citizens children born within the jurisdiction, without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens."

The decision in this case was that a woman born of citizen parents within the United States was a citizen of the United States, although not entitled to vote, the elective franchise not being essential to citizenship.

In the case of *Elk v. Wilkins*, 112 U. S. 99-103, 28 L. ed. 645-647, 5 Sup. Ct. Rep. 41, the Supreme Court, in construing the words "subject to the jurisdiction thereof," said: "The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance."

This language has also been cited in support of the contention that birth in the United States to alien parents does not confer American citizenship. What the court decided in this case was

that an Indian born a member of one of the Indian tribes within the United States, which still existed and was recognized as an Indian tribe by the United States, who had voluntarily separated himself from his tribe, and taken up his residence among the white citizens of a state, but who did not appear to have been naturalized, or taxed, or in any way recognized or treated as a citizen, either by the United States or by the state, was not a citizen of the United States, as a person born in the United States, "and subject to the jurisdiction thereof," within the meaning of the clause in question. The court said that by the Constitution, as originally established, "Indians not taxed" were excluded from the persons according to whose numbers representatives in Congress and direct taxes were apportioned among the several states, and Congress was empowered to regulate commerce, not only with foreign nations and among the several states, but with the Indian tribes; that the Indian tribes, being within the territorial limits of the United States, were not, strictly speaking, foreign states, but were alien nations, distinct political communities, the members of which owed immediate allegiance to their several tribes, and were no part of the people of the United States; that the alien and dependent condition of one of those tribes could not be put off at their own will, without the action or assent of the United States; and that they were never deemed citizens, except when naturalized, collectively or individually, under explicit provisions of a treaty, or of an act of Congress; and therefore that "Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the 1st section of the 14th Amend-

ment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States of ambassadors or other public ministers of foreign nations." And it was observed that the language used in defining citizenship, in the 1st section of the civil rights act of 1866 (14 Stat. at L. 27, chap. 31, U. S. Comp. Stat. 1901, p. 1268), by the very Congress which framed the 14th Amendment, was, "all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed."

This decision concerned only members of the Indian tribes within the United States, and had no tendency to deny citizenship to children born in the United States of foreign parents of Caucasian, African, or Mongolian descent, not in the diplomatic service of a foreign country.

In *McKay v. Campbell*, 2 Sawy. 118, Fed. Cas. No. 8,840, decided by the United States circuit court in 1871, it was held that the son of a British father and a Chinook Indian woman, born in Oregon during the joint occupation of the country under the convention between the United States and Great Britain, was not a citizen of the United States. This decision was not based on the fact that the father was an alien, but on the ground that the son was not born subject to the exclusive jurisdiction of the United States. The circuit court said: "The rule of the common law . . . is plain and well settled, both in England and America. Except in the case of children of ambassadors, who are in theory born upon the soil of the sovereign whom the parent represents, a child born in the allegiance of the King is born his subject, without reference to the political status or condition of its parents. Birth and allegiance go together."

The court continued: "When it is said that, by the common law, a person born of alien parents, and in the allegiance of the

United States, is born a citizen thereof, it is necessarily understood that he is not only born on soil over which the United States has or claims jurisdiction, but that such jurisdiction for the time being is both actual and exclusive, so that such person is, in fact, born within the power, protection, and obedience of the United States. Generally speaking, the various places in the world are claimed or admitted, for the time being, to be under the exclusive jurisdiction of some particular sovereign or government, so that a person born at any one of them is, without doubt, born in the allegiance of such particular sovereign or government. But that is not this case,—which in this respect is a singular one. Its parallel has not been found in the books. The country of the plaintiff's birth was, at the time thereof, jointly occupied by the citizens and subjects of two governments in pursuance of a treaty to that effect. Under the circumstances, neither government can be considered as exercising general exclusive jurisdiction over the country and its inhabitants."

Quoting the language of § 1 of the 14th Amendment, the court said: "This is nothing more than declaratory of the rule of the common law, as above stated. To be a citizen of the United States by reason of his birth, a person must not only be born within its territorial limits, but he must also be born subject to its jurisdiction,—that is, in its power and obedience. The only other construction of this clause that I can imagine possible is the following: Taken literally, it does not appear to require that the person should be born 'subject to the jurisdiction of the United States;' but, if he is born within its territorial limits, whether under its jurisdiction or not, and afterwards becomes subject to such jurisdiction, he then, and so long as this status continues, becomes and remains a citizen of the United States. . . . But I think such construction fanciful and artificial. It is not to be presumed that the amendment was made to

the Constitution to change the rule of the common law, but rather to declare and enforce it uniformly throughout the United States and the several states, and especially in the case of the negro."

In the case of *Re Look Tin Sing*, 10 Sawy. 353, 21 Fed. 905, decided in 1884, the United States circuit court held that a person born in the United States of Chinese parents who were themselves aliens and incapable of becoming naturalized was a citizen of the United States. Look Tin Sing was born in California in 1870, his parents being Chinese subjects who had resided in California since 1864. When he was nine years of age he went to China, and five years later returned to the United States. His admission was resisted on the ground that he was without the certificate of identity required of Chinese persons by the acts of 1882 and 1884 (22 Stat. at L. 58, chap. 126, § 4, and 23 Stat. at L. 115, chap. 220, § 4). Mr. Justice Field, who delivered the opinion of the court, cited approvingly the case of *Lynch v. Clarke*, 1 Sandf. Ch. 583, and said: "Independently of the constitutional provision, it has always been the doctrine of this country, except as applied to Africans brought here and sold as slaves, and their descendants, that birth within the dominions and jurisdiction of the United States of itself creates citizenship. The clause as to citizenship was inserted in the amendment, not merely as an authoritative declaration of the generally recognized law of the country so far as the white race is concerned, but also to overrule the doctrine of the *Dred Scott Case*, affirming that persons of the African race brought to this country and sold as slaves, and their descendants, were not citizens of the United States, nor capable of becoming such. . . . The clause changed the entire status of these people. It lifted them from their condition of mere freedmen, and conferred upon them, equally with all other native-born, the rights of citizenship. When it was adopted the naturalization

laws of the United States excluded colored persons from becoming citizens, and the freedmen and their descendants, not being aliens, were without the purview of those laws. So, the inability of persons to become citizens under those laws in no respect impairs the effect of their birth, or of the birth of their children, upon the status of either as citizens under the amendment in question."

Quoting the language of the 1st section of the Amendment, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside," the court said: "This language would seem to be sufficiently broad to cover the case of the petitioner. He is a person born in the United States. Any doubt on the subject, if there can be any, must arise out of the words 'subject to the jurisdiction thereof.' They, alone, are subject to the jurisdiction of the United States who are within their dominions and under the protection of their laws, and with the consequent obligation to obey them, when obedience can be rendered; and only those thus subject by their birth or naturalization are within the terms of the amendment. The jurisdiction over these latter must, at the time, be both actual and exclusive. The words mentioned except from citizenship children born in the United States of persons engaged in the diplomatic service of foreign governments, such as ministers and ambassadors, whose residence, by a fiction of public law, is regarded as part of their own country. This extraterritoriality of their residence secures to their children born here all the rights and privileges which would inure to them had they been born in the country of their parents.* Persons born on a public vessel of a foreign country, whilst within the waters of the

*See For. Rel. 1891, pp. 19, 21.

United States, and consequently within their territorial jurisdiction, are also excepted. They are considered as born in the country to which the vessel belongs. In the sense of public law, they are not born within the jurisdiction of the United States. The language used has, also, a more extended purpose. It was designed to except from citizenship persons who, though born or naturalized in the United States, have renounced their allegiance to our government, and thus dissolved their political connection with the country."

With this explanation of the meaning of the words, "subject to the jurisdiction thereof," Justice Field said: "It is evident that they do not exclude the petitioner from being a citizen. He is not within any of the classes of persons excepted from citizenship; and the jurisdiction of the United States over him at the time of his birth was exclusive of that of any other country."

This decision has since been followed by the Federal courts. See the cases of *Ex parte Chin King*, 35 Fed. 354; *Re Yung Sing Hee*, 36 Fed. 437; *Re Wy Shing*, 36 Fed. 553; *Gee Fook Sing v. United States*, 1 C. C. A. 211, 7 U. S. App. 27, 49 Fed. 146; and *Re Wong Kim Ark*, 71 Fed. 382.

In *Wy Shing's Case*, decided in 1888, Judge Sawyer said: "In *Look Tin Sing's Case*, 10 Sawy. 353, 21 Fed. 905, after a full argument by able counsel and careful consideration by the court, Mr. Justice Field, with the concurrence of the circuit and district judges, held that a person born in the United States, of Chinese parents not engaged in the diplomatic service of any foreign government, is born subject to the jurisdiction of the United States, and is a citizen thereof, under the provisions of the 14th Amendment to the national Constitution. . . . I am still satisfied with this ruling, but, if I were in doubt, I should not presume to overrule Mr. Justice Field upon a question which he has so maturely considered and decided. If the

point was erroneously decided, then children of Caucasian parentage, born under similar circumstances, are not citizens; and hundreds of thousands have for years been unlawfully enjoying and exercising all the rights of citizens, civil and political."

In the similar case of *Gee Fook Sing v. United States*, the court said: "Inasmuch as the 14th article of the Amendments to the Constitution of the United States declares that all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside, the laws excluding immigrants who are Chinese laborers are inapplicable to a person born in this country, and subject to the jurisdiction of this government, even though his parents were not citizens, nor entitled to become citizens, under the laws providing for the naturalization of aliens."

In the *Case of Wong Kim Ark*, decided in January, 1896, by the United States district court for the northern district of California, it was contended by counsel for the United States, who were opposing his admission into this country, that, according to the rule of international law, the political status of the child follows that of the father; that this doctrine exists in the United States, and not that of the common law; that the words "subject to the jurisdiction thereof," in the 14th Amendment, mean subject to the political jurisdiction of the United States; that, therefore, a person born in this country of a Chinese father and mother, both domiciled residents of the United States, is not a citizen of the United States. Judge Morrow, in delivering the opinion of the court, said: "The 14th Amendment to the Constitution of the United States must be controlling upon the question presented for decision in this matter, irrespective of what the common law or international doctrine is. But the interpre-

tation thereof is undoubtedly confused and complicated by the existence of these two doctrines, in view of the ambiguous and uncertain meaning of the qualifying phrase 'subject to the jurisdiction thereof,' which renders it a debatable question as to which rule the provision was intended to declare. Whatever of doubt there may be is with respect to the interpretation of that phrase. Does it mean, 'subject to the laws of the United States,' comprehending, in this expression the allegiance that aliens owe, in a foreign country, to obey its laws; or does it signify, 'to be subject to the political jurisdiction of the United States,' in the sense that is contended for on the part of the government? This question was ably and thoroughly considered in *Re Look Tin Sing*, 10 Sawy. 353, 21 Fed. 905, where it was held that it meant subject to the laws of the United States. . . . The opinion discusses and decides the precise question involved in the case at bar. There, as here, a person of Chinese descent, born in the United States, but whose parents had always been subjects of the Emperor of China, claimed the right to land in the United States by virtue of his right as a citizen thereof, and, as such citizen, to be unaffected by any of the Chinese exclusion acts. The court held that, although born here of parents who were subjects of the Emperor of China, he was a citizen [of the United States] within the meaning of the 14th Amendment."

The court, after quoting copiously from Justice Field's opinion in *Look Tin Sing's Case*, and referring to the *Cases of Chin King, Yung Sing Hee*, and *Gee Fook Sing*, said: "It is clear that these decisions, . . . determining, as they do, the identical question involved in the case at bar, are conclusive and controlling upon this court, unless the Supreme Court of the United States has directly and authoritatively, and not by way

of *dictum*, announced and laid down a doctrine at variance with that expounded in the cases in this circuit."

The court referred to the statement (mentioned above) in the *Slaughter-House Cases*, 16 Wall. 36, 21 L. ed. 394, and to *Elk v. Wilkins*, 112 U. S. 94, 28 L. ed. 643, 5 Sup. Ct. Rep. 41, and held that the former was but *obiter dictum*, while the latter did not dispose of the matter. In conclusion, Judge Morrow said: "Counsel for the United States have argued with considerable force against the common-law rule and its recognition, as being illogical and likely to lead to perplexing, and perhaps serious, international conflicts, if followed in all cases. But these observations are, obviously, addressed to the policy of the rule, and not to its interpretation. The doctrine of the law of nations,* that the child follows the nationality of the parents, and that citizenship does not depend upon mere accidental place of birth, is undoubtedly more logical, reasonable, and satisfactory, but this consideration will not justify this court in declaring it to be the law against controlling judicial authority. It may be that the executive departments of the government are at liberty to follow this international rule in dealing with questions of citizenship which arise between this and other countries, but that fact does not establish the law for the courts in dealing with persons within our own territory. In this case the question to be determined is as to the political status and rights of Wong Kim Ark under the law in this coun-

*There is, in reality, no international-law rule of citizenship whereby the children born of the subjects or citizens of one country in the territory of another follow the nationality of the parents. Whether the children born abroad of the citizens or subjects of a state shall have the nationality of their parents, is a question for the exclusive determination of the municipal law of the individual state. A nation is supposed to be the only proper judge of who are its citizens or subjects. International law has nothing to do with the question.

try. . . . From the law as announced and facts as stipulated, I am of opinion that Wong Kim Ark is a citizen of the United States within the meaning of the citizenship clause of the 14th Amendment." 71 Fed. 382.

This case being taken, on appeal, to the Supreme Court, that tribunal, in March, 1898 (169 U. S. 649, 42 L. ed. 890, 18 Sup. Ct. Rep. 456), affirmed the judgment of the court below, and authoritatively settled the question we have been considering. The court laid down these propositions:

1. By the common law, every child born in England of alien parents was a natural-born subject, unless the child of a diplomatic representative of a foreign government, or of an alien enemy in hostile occupation of the place where the child was born.

2. This rule was in force in all the English colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the Constitution as originally established.

3. There is no ground for the theory that, at the time of the adoption of the 14th Amendment of the Constitution of the United States, there was any settled and definite rule of international law, generally recognized by civilized nations, inconsistent with the ancient rule of citizenship by birth within the dominion.

4. The Constitution of the United States must be interpreted in the light of the common law.

5. The 14th Amendment and the civil rights act of 1866 (14 Stat. at L. 27, chap. 31, U. S. Comp. Stat. 1901, p. 1268) reaffirmed in the most explicit and comprehensive terms the fundamental principle of citizenship by birth.

6. It is the inherent right of every independent nation to determine for itself and according to its own Constitution or laws what classes of persons shall be entitled to its citizenship.

The court said that "the real object of the 14th Amendment of the Constitution, in qualifying the words, 'all persons born in the United States,' by the addition, 'and subject to the jurisdiction thereof,' would appear to have been to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases,—children born of alien enemies in hostile occupation* and children of diplomatic representatives of a foreign state,—both of which, as has already been shown, by the law of England, and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country."

Acting Secretary Adee in an instruction to the United States Embassy in Rome, August 8, 1901, said: "The position of the Department is that birth in the United States, irrespective of the nationality of the parents, confers American citizenship. In view of the decisions of our Federal courts, there can be no doubt of the correctness of this position." For. Rel. 1901, p. 303.

The foregoing establishes, beyond controversy, that, by our law, the children born to foreigners in the United States are citizens of the United States.

4. Dual citizenship of children of aliens born in United States; election of nationality.— It is objected to this disposition of the

*The children of enemies, born in a place within the dominions of another sovereign then occupied by them by conquest, are still aliens; but the children of the natives, born during such temporary occupation by conquest, are, upon a reconquest or reoccupation by the original sovereign, deemed, by a sort of postliminy, to be subjects from their birth, although they were then under the actual sovereignty and allegiance of an enemy. *Inglis v. Sailor's Snug Harbor*, 3 Pet. 156, 7 L. ed. 637.

question that it leaves room for frequent conflicts of law in cases where the alien parent is a subject of a country whose laws declare that the children born abroad, of its subjects, are also its subjects. From the fact that every state has the right to determine by its own law who shall be entitled to its citizenship, conflicts of law result, and it frequently happens that a person has a dual nationality. Such conflicts are not resolved by a resort to the principles of international law. In respect to all persons as to whose nationality a difference of legal theory can exist, international law has made no choice, and it is left open to states to act as they like. Hall, *International Law*, 4th ed. chap. 5, § 66. As in conflicts of law in relation to other matters, however, states have shown a disposition to relax sovereign rights, and have made mutual concessions by which the effects of conflicts of law in regard to nationality are to a considerable extent avoided.

It is a principle, recognized by a large number of states, that where there is a conflicting claim to the allegiance of a person,—one country claiming him by reason of his birth within its jurisdiction, and the other by virtue of his parentage,—he must, upon reaching majority, or within a reasonable time thereafter, make an election of nationality.

The British act of 1870 declares that “any person who is born out of Her Majesty’s dominions, of a father being a British subject, may, if of full age, and not under any disability, make a declaration of alienage, . . . and, from and after the making of such declaration, shall cease to be a British subject.” 33 & 34 Vict. 104, chap. 14.

The right of election is also recognized by the laws of France, Spain, Belgium, Greece, Bolivia, Italy, Portugal, and Mexico.

Hall, *International Law*, 3d ed. pp. 222, 223; 2 Wharton, *International Law* Dig. 404.

The practical recognition of this principle by this government is illustrated in the following cases:

Mr. Seward held, in 1868, that "the son born in this country (of a native Prussian) acquired the right of electing to which country he should claim citizenship. This election he appears to have exercised in favor of Prussia by his residence there for years with his father and by a continued residence there after arriving at the age of twenty-one years." Mr. Seward to Mr. Banks, April 7, 1868, MSS. Dom. Let.

Mr. Fish held that "the minor child of a Spaniard, born in the United States, and while in the United States, or in any other country than Spain, is a citizen of the United States. The United States has, however, recognized the principle that persons, although entitled to be deemed citizens by its laws, may also, by the law of some other country, be held to allegiance in that country." Mr. Fish to Mr. Cushing, February 16, 1877, MSS. Inst. to Spain; 2 Wharton, *International Law* Dig. 396.

Mr. Evarts, in an instruction to the United States Minister at Paris, held that a child who, born in the United States to French parents, goes in his minority to France and there remains voluntarily after he has become of full age, may be held to have abjured his American nationality. Mr. Evarts to Mr. Noyes, December 31, 1878, MSS. Inst. to France.

And in an instruction to Mr. White, United States Minister to Germany, Secretary Evarts said that the sons born in this country to a German, naturalized here, are, though they were taken back, for a few years during their minority, to Germany, citizens of the United States, they having returned to this country before having arrived at full age, and electing it as their

domicil when arriving at full age. MSS. Inst. to Germany, June 6, 1879, 2 Wharton, International Law Dig. 397.

Minor children born in this country to naturalized citizens, afterwards temporarily visiting Germany, are entitled to passports to return to the United States on the eve of their coming of age. Mr. Evarts to Mr. White, April 23, 1880, MSS. Inst. to Germany, 2 Wharton, International Law Dig. 397.

And in another case Mr. Evarts said: "A person born in the United States has a right, though he has intermediately been carried abroad by his parents, to elect the United States as a nationality when he arrives at full age." Mr. Evarts to Mr. Cramer, November 12, 1880, MSS. Inst. to Denmark, 2 Wharton, International Law Dig. 397.

Friedrich De Bourry was born in New York city, in 1862, of Austrian parents then temporarily resident in that city, where he remained until he was five years of age, when he accompanied his mother to Europe. Two years later his father joined him and his mother in Vienna, where the father died in 1880. The son engaged in the Austrian railway service until 1886, at which time he applied to the United States Legation for a passport as an American citizen. The matter being referred to the Department of State, Mr. Bayard declined to grant the passport because there was no evidence that young De Bourry had ever made, or intended to make, an election to become a citizen of the United States. Said he: It is not "pretended that when, on December 5, 1883, the present memorialist arrived at full age, he took any steps to make or record his election of citizenship in the United States. For several years before that date he was old enough, with his mother's permission, which it is plain, from her affidavit, she was ready to give, to come to the country of his birth, if it had been the country of his intended citizenship. He alleges no effort of this kind, nor any

act or event indicating his election of United States citizenship when he arrived at full age. . . . He has exhibited no such proof of an election, on arriving at full age, of United States citizenship as now entitles him to a passport. An election, in a case of dual or doubtful allegiance, which is the utmost which can be claimed in the present case, must be made on attaining majority, or shortly afterwards, and must be signified by acts plainly expressive of intention, such as immediate preparations to return to the elected country." Mr. Bayard to Mr. Lee, July 24, 1886, MSS. Inst. to Austria, 2 Wharton, International Law Dig. 401, 402.

In the *Case of Steinkauler*, 15 Ops. Atty. Gen. 18, who was born in the United States of German parents and taken to Germany at the age of four years, and who was called upon to report for duty in the German army when twenty years of age, Attorney General Pierrepont said: "Young Steinkauler is a native-born American citizen. There is no law of the United States under which his father or any other person can deprive him of his birthright. He can return to America at the age of twenty-one, and in due time, if the people elect, he can become President of the United States. . . . I am of opinion that when he reaches the age of twenty-one years he can then elect whether he will return and take the nationality of his birth, with its duties and privileges, or retain the nationality acquired by the act of his father. This seems to me to be 'right reason,' and I think it is law." In view of the fact that the son was domiciled with the father, and subject to him under the law during his minority, and as he declined to give any assurance of intention of ever returning to the United States and claiming his American nationality by residence here, the Attorney General held that he could not rightfully invoke the aid of this government to relieve him from military duty in Germany dur-

ing his minority. See also *Case of Blesch*, For. Rel. 1877, p. 247, and the *Case of Pipping's Sons*, For. Rel. 1899, pp. 600, 603.

François Heinrich was born in the United States of Austrian parents, and was taken to Austria when two years of age, where he remained for twenty years, when he was called upon to render military service. He claimed exemption on the ground that he was an American citizen. There was in force between the United States and Austria a treaty of naturalization, providing that citizens of the one country, who have resided in the territories of the other uninterruptedly at least five years, and during such residence have become naturalized, shall be held to be citizens of the latter country. According to the Austrian law, the children born abroad to subjects of Austria are Austrians. Secretary Fish, upon the advice of Attorney General Williams (14 Ops. Atty. Gen. 154), held that, though François Heinrich was a native of this country, and as such originally clothed with American nationality, yet, having resided in Austria uninterruptedly far beyond the period mentioned in the treaty, and having at different times obtained passports from the Austrian government and traveled under its protection as an Austrian subject, he must be deemed to have acquired Austrian citizenship. Mr. Fish to Baron Lederer, December 24, 1872, For. Rel. 1873, p. 78.

Bernard J. Gautier, who claimed as an American citizen before the United States and Mexican claims commission, convention of 1868 (15 Stat. at L. 679), was born in Texas of French parents, and at the age of nineteen years removed to Mexico with his mother, a widow, where they established a commercial house. While in Mexico he presented to a commission, established under a treaty between Mexico and France, a claim as a French subject. The French and Mexican commission

considered him entitled to French nationality, and made an award in his favor. The United States and Mexican commission held that, as it did not appear that the parents of the claimant were naturalized during their residence in Texas, it was to be presumed that they retained their original French nationality; that the claimant, who left the United States before arriving at the age of twenty-one years, was entitled, according to the French Code, to retain the nationality transmitted by his parents; that the laws of Mexico did not forbid such election; but that he was not entitled to renounce his French nationality and elect that of the United States, after he had abandoned the latter country to establish himself in another, and after he had made a valid act of adoption of French nationality. Moore, *International Arbitrations*, 2450.

In the case of Josef Georg Surmann, who was born in Cleveland, Ohio, in 1873, of a German father, and who, in 1874, was taken by his father to Germany where he had continued to reside, Secretary Olney, in 1896, said: "Josef Georg Surmann is, according to the Constitution and laws of the United States, a citizen thereof by birth. Conformably to a general rule of international law, followed by this Department in its special rulings in cases as they arise, the young man might, if sojourning in a foreign country, have been required, on attaining the age of twenty-one, to make formal option of allegiance. It does not appear whether he ever made such option, or was afforded an opportunity to do so. Were he now called upon to elect American allegiance, and were he to demonstrate his immediate purpose of returning to the United States, here to dwell and discharge the duties of citizenship, a passport might be issued to him by the United States ambassador at Berlin upon being satisfied of the bona fides of the case. Otherwise, following the precedents established for many years, to which you advert, this

Department would be constrained to regard Josef Georg Surmann as having voluntarily relinquished his right to continued protection as a citizen of the United States by reason of and during his prolonged and indefinite sojourn abroad after attaining majority." Mr. Olney to Mr. von Reichenau, November 20, 1896, For. Rel. 1897, p. 182.

CHAPTER II.

CITIZENSHIP BY BIRTH ABROAD TO AN AMERICAN FATHER.

5. General doctrine.
6. The father must have been a citizen at time of birth of child.
7. The father must have resided in the United States.
8. Dual citizenship of such children; election of nationality.
9. Illegitimate children.

5. General doctrine.— Citizenship is also conferred, by our law, upon children born in foreign countries, whose fathers are, at the time of their birth, citizens of the United States, and have at some time resided therein.

While Congress did not undertake, until 1866, to declare what constitutes citizenship by birth within the United States, one of the earliest laws enacted by the national legislature provided that “the children of citizens of the United States that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural-born citizens [of the United States].” 1 Stat. at L. 104, chap. 3.

It was almost universally conceded that citizenship by birth in the United States was governed by the principles of the English common law. It is very doubtful whether the common law covered the case of children born abroad to subjects of England. Statutes were enacted in England to supply this deficiency, or to remove the doubt which existed in regard to the matter. Hence, it was deemed necessary to enact a similar law in the United States to extend citizenship to children born to American parents out of the United States.

In 1795 the following provision was substituted for the lan-

guage of the act of 1790, above referred to: "The children of citizens of the United States, born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States." 1 Stat. at L. 415, chap. 20, § 3.

In 1802, Congress repealed the act of 1795, and enacted that "the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States." 2 Stat. at L. 155, chap. 28, § 4 (U. S. Comp. Stat. 1901, p. 1334).

This law was defective in being confined to the case of children of parents who were citizens in 1802, or had been previous to that time. It remained upon the statute books, however, for more than fifty years. Mr. Horace Binney wrote an article on the subject in 1854, which was published in the *American Law Register* (vol. 2, p. 193), and which is said to have induced the passage by Congress of the act of 1855 (Rev. Stat. § 1993, U. S. Comp. Stat. 1901, p. 1268), which reads as follows: "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

Under this statute the concurrence of two facts is necessary to confer American citizenship upon a child born abroad: (1) The father, at the time of the birth of the child, must be a citizen of the United States. (2) The father must at some time have resided in the United States.

6. The father must have been a citizen at time of birth of child.—The father must be a citizen at the time of the birth of the child. If he has, before the birth of the child, become a

citizen of a foreign power, the child is not a citizen of the United States. 14 Ops. Atty. Gen. 295.

“If born after the father has in any way expatriated himself, the children born abroad are to all intents and purposes aliens, and not entitled to protection from the United States.” Sec’y Fish to the President, August 25, 1873, For. Rel. 1873, pt. 2, p. 1191.

If the father has, at the time of the birth of a son, abandoned his citizenship in the United States, the son can make no claim to such citizenship. Mr. Frelinghuysen to Mr. Kasson, January 15, 1885, For. Rel. 1885, p. 396; Mr. Bayard to Mr. Vignaud, July 2, 1886, For. Rel. 1886, p. 303; Mr. Olney to Mr. Uhl, October 10, 1896, MSS. Dip. Inst. to Germany.

Children born in a foreign country of American parents who resided there, but who never renounced their American citizenship, are citizens of the United States. *Ware v. Wisner*, 50 Fed. 310. In this case both father and sons had engaged in business in Canada, and several times voted there upon their property qualifications, as prescribed by law. The father always refused to take the oath of allegiance to the British government.

7. The father must have resided in the United States.— If the father was born abroad, and has always resided abroad, his child is not a citizen, for the statute expressly declares that “the rights of citizenship shall not descend to children whose fathers never resided in the United States.” This limitation of the privileges of citizenship to the children of citizens who have resided in the United States was designed to prevent the residence abroad of successive generations of persons claiming the privileges of American citizenship while evading its duties.

8. Dual citizenship of such children; election of nationality.— In countries where the law of citizenship by birth within the

territory obtains, our law conferring citizenship upon children born to American fathers abroad has no superior efficacy.

It is competent for the United States to declare by law the conditions constituting citizens within its territory. It may also confer the rights and privileges of its citizenship upon persons born of American parents in other countries, so as to entitle them to the rights of property and of succession within its limits; and also political privileges and civil rights to be enjoyed or exercised within its territory and jurisdiction. But this government cannot extend its jurisdiction beyond its own territorial limits so as to relieve those born under and subject to another jurisdiction from their obligations or duties thereto; nor can it, by undertaking to confer its citizenship upon persons who have never come within its territory, interfere with the just right of the foreign government to control its own subjects. Sec'y Fish to the President, August 25, 1873, For. Rel. pt. 2, p. 1191; 13 Ops. Atty. Gen. 89.

It has been repeatedly held by the executive branch of this government that our statute declaring children born abroad of American citizens to be themselves citizens cannot, consistently with our established rule of citizenship by birth in this country, operate extraterritorially so as to relieve any person born and residing in a foreign country, and subject to its government, from his allegiance to that country. *United States v. Wong Kim Ark*, 169 U. S. 692, 42 L. ed. 906, 18 Sup. Ct. Rep. 456. This is in accordance with the well-known principle that, while every independent state has, as an incident of its sovereignty, the right of municipal legislation and jurisdiction over all persons within its territory, the laws of a state cannot operate beyond its own territory against the will and policy of another state. Secretary Hay to Mr. Kelly, January 2, 1903, MSS. Dom. Let.

"It is evident," said Secretary Fish, "that the law-making

power, not only had in view this limit to the efficiency of its own municipal enactments in foreign jurisdiction, but that it has conferred only a qualified citizenship upon the children of fathers born without the jurisdiction of the United States, and has denied to them, what pertains to other American citizens, the right of transmitting citizenship to their children, unless they shall have made themselves residents of the United States, or, in the language of the 14th Amendment of the Constitution, have made themselves 'subject to the jurisdiction thereof.' The child born of alien parents in the United States is held to be a citizen thereof, and to be subject to duties to this country which do not attach to the father. The same principle on which such children are held by us to be citizens of the United States, and to be subject to duties to this country, applies to the children of American fathers born without the jurisdiction of the United States, and entitles the country within whose jurisdiction they are born to claim them as citizens, and to subject them to duties to it; the citizenship of the father is that of the child so far as the laws of the country of which the father is a citizen are concerned and within the jurisdiction of that country; but the child, from the circumstances of its birth, may acquire rights and owes another fealty besides that which attaches to the father." For. Rel. 1873, pt. 2, p. 1191.

The American and Spanish claims commission, convention of 1871 (17 Stat. at L. 839), in the case of Lavigne and Bister, held that the act of Congress of February 10, 1855 (10 Stat. at L. 604, chap. 71, § 1, U. S. Comp. Stat. 1901, p. 1268), which provided that "persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared, to be citizens of the United States," cannot operate so as to interfere with the allegiance which such children may owe

to the country of their birth while they continue within its territory. Moore, *International Arbitrations*, 2454.

Where application was made to the Department of State for passports for five persons residing in the island of Curacao, four of whom were born in that island, and one in the island of St. Thomas, and all of whom were children of native citizens of the United States, Attorney General Hoar, whose opinion was asked by Secretary Fish, said: "If, therefore, the fathers of the applicants, at the time of their birth, were citizens of the United States, . . . it is my opinion that the applicants are citizens of the United States, under the provisions of the statute (act of Congress of February 10, 1855 [10 Stat. at L. 604, chap. 71, § 1, U. S. Comp. Stat. 1901, p. 1268]), and entitled to all the privileges of citizenship which it is in the power of the United States government to confer. Within the sovereignty and jurisdiction of this nation, they are undoubtedly entitled to all the privileges of citizens. . . . But, while the United States may, by law, fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it is clear that the United States cannot, by undertaking to confer the rights of citizenship upon the subjects of a foreign nation, who have not come within our territory, interfere with the just rights of such nation to the government and control of its own subjects. If, therefore, by the laws of the country of their birth, children of American citizens, born in that country, are subjects of its government, I do not think that it is competent to the United States, by any legislation, to interfere with that relation, or, by undertaking to extend to them the rights of citizens of this country, to interfere with the allegiance which they

may owe to the country of their birth while they continue within its territory, or to change the relation to other foreign nations which, by reason of their place of birth, may at any time exist." 13 Ops. Atty. Gen. 90, 91.

It has been suggested that in such cases—where, by the laws of the country of birth, the son is a citizen thereof—the conflict is decided according to the laws of the one of the two countries within whose jurisdiction the individual happens to be. 13 Ops. Atty. Gen. 89.

Practically, this conflict is usually more apparent than real, as it is a principle pretty generally recognized by nations, that the son thus born must, after reaching full age, make an election of nationality.

Wharton, in his *Conflict of Laws*, § 10, says: "By international law, as accepted in the United States and Europe, the children born abroad of American citizens are regarded as citizens of the United States, with the right, on reaching full age, to elect one allegiance and repudiate the other, such election being final."

In *Ludlam v. Ludlam*, 26 N. Y. 356, 84 Am. Dec. 193, the supreme court of New York, in passing upon the citizenship of Maximo Ludlam, who was born of an American father in Peru, said: "On his arriving at maturity he would have the right to elect one allegiance and repudiate the other, and such election would be conclusive upon him, and would doubtless be respected by the governments."

It is accordingly held by the Department of State that, while the child born abroad to an American father is, by our law, a citizen of the United States, he must, in order to conserve such citizenship, upon reaching full age, or within a reasonable time thereafter, formally elect United States nationality. Mr. Bayard to Mr. Pendleton, April 27, 1886, 2 Wharton, *International*

Law Dig. p. 418, For. Rel. 1886, p. 327; Mr. Hay to Mr. Kelly, January 2, 1903, MSS. Dom. Let.

It will be observed that the statute applies only to "children;" its language being, "All children . . . are declared to be citizens of the United States."

Robert Emden, who was born in Switzerland in 1862, of a father who had become naturalized in the United States, applied to the United States Legation at Berne for a passport, in 1885. The matter was referred to the Department of State, which held: "The rule as to children only applies to minors, since, when the child becomes of age, he is required to elect between the country of his residence and the country of his alleged technical allegiance. . . . If however, Mr. Emden seeks to come in under the 2d clause of § 2172 [U. S. Comp. Stat. 1901, p. 1334], or under the more general terms of § 1993 [U. S. Comp. Stat. 1901, p. 1268], he is met with the difficulty that he is no longer a 'child,' but that he is of full age, and that his citizenship is no longer derivative, but is a matter of personal election. If he solemnly elected, on arriving at full age, to be a citizen of the United States, the proofs of such election must be produced. If, on the other hand, he made no such election, but by remaining in Switzerland is to be inferred to have accepted Swiss nationality, he cannot now obtain a passport as a citizen of the United States." Mr. Porter to Mr. Winchester, September 14, 1885, 2 Wharton, International Law Dig. p. 411; For. Rel. 1885, p. 811.

Karl Klingensmeyer, was born in Württemberg, Germany, in 1862, of a father who, after naturalization in the United States, returned to his native land, and reacquired German nationality. In 1885 young Klingensmeyer applied to the United States Legation in Berlin for a passport. Secretary Frelinghuysen said: "Suppose that this young man had obtained through his father's

acquired American nationality any inchoate rights or claim to United States citizenship, and that these, on account of his father's voluntary foreign residence, and his loss of American citizenship, were held in abeyance during the son Karl's residence with his father there, reserving to him, Karl Klingemeyer, the right of choosing for himself, when he should have attained the age of twenty-one years, which country he would adhere to. This reserved privilege in his favor is always accompanied by the implied condition that he shall make, and in some formal manner, not always prescribed, but nevertheless well understood, avow his election within a reasonable time after he attains majority. . . . He is now nearly twenty-three years old; he had not, until the filing of his application for a United States passport, even so much as claimed American citizenship, and he does so now accompanied by the open avowal that he never intends to make the United States his home, his residence, or his country, except to demand technical citizenship in so far as that may serve his convenience and subserve his personal interest. . . . It may well be held that Mr. Karl Klingemeyer is not, on his present application, entitled to a United States passport." Mr. Frelinghuysen to Mr. Kasson, January 15, 1885, 2 Wharton, *International Law* Dig. p. 414; *For. Rel.* 1885, pp. 398, 399.

Victor Labroue was born in France in September, 1865. His father, a native of France, emigrated to the United States in 1853, was married in Minnesota in 1862, was naturalized there in 1863, and the following year returned to France, where he always afterwards resided. The son, who in 1885 applied to the legation in Paris for a passport, took the oath of allegiance before the United States consul at Bordeaux, and declared in his application for a passport that his domicil was Ashland, Minnesota, that he had always considered himself an American citi-

zen, and had never taken any steps which might involve the forfeiture of his nationality, and that it was his intention at some future time to return to his home at Ashland. He had, however, never been in the United States. The first question that arose in this case was whether Ernest Labroue, the father, was a citizen of the United States at the time of the birth of Victor. "If Ernest Labroue had at that time abandoned his citizenship in this country," said Mr. Bayard, "then his son can make no claim to such citizenship. At present, as there is no proof of such abandonment at the time in question, I hold the case of the son to be covered by Rev. Stat. § 1993 [U. S. Comp. Stat. 1901, p. 1268], reserving the question, however, for revision on a fuller presentation of the facts. Supposing, then, the son's case to fall within the statute, can he, now residing in France (where he has always resided) claim the privileges of the statute? By the law of nations, apart from any municipal legislation, he would be entitled, when of full age, to elect which of the two allegiances he will accept, and with the law of nations in this respect coincides, according to your despatch, the municipal law of France. But this election cannot be made by Victor Labroue until he arrives at full age in September, 1886, and the election, to be operative, must not only be formally and solemnly declared, but must be followed by his coming to, and taking up his abode as soon as practicable in, the United States. Should he remain voluntarily in France after the period when the French law, as well as the law of nations, requires him to make his election, this may properly be regarded as an abandonment of American, and an acceptance of French, allegiance." Mr. Bayard to Mr. Vignaud, July 2, 1886, For. Rel. 1886, p. 303.

"When a citizen of the United States has born to him abroad a legitimate son, such son, on his arrival at full age, may elect, as the country of his allegiance, either the United States or the country of his birth. But the election must be evidenced by the

overt act of taking up his residence in the country of such election." Sec'y Bayard to Mr. Stallo, February 17, 1887, MSS. Dip. Inst. to Italy; Mr. Hay to Mr. Kelly, January 2, 1903, MSS. Dom. Let.

This government frequently issues passports to foreign-born children of American citizens who are residing abroad, during their minority, but there is no uniform practice in the matter. No inflexible rule can be applied, since the particular country in which they may be dwelling may or may not, according to the law obtaining there, assert a claim to their allegiance. In some countries the contingency is covered by express rules, defining the conditions under which the *jus sanguinis* or the *jus soli*, as the case may be, shall prevail.

"Until coming of age," said Mr. Seward in a case arising in Mexico, "a child born abroad of American parents, and continuing abroad, is an American citizen, and as such entitled to a passport." Mr. Seward, Acting Sec'y of State, to Mr. Foster, July 2, 1879, For. Rel. 1879, p. 815.

In the case of the Agueros, the father, a native Cuban, was naturalized in New York in 1876, and the following year returned to Cuba, where he continued to reside, and where his children were born,—a daughter in 1878, and a son in 1882. In 1896 he applied to the Consul General in Havana to have his children registered as citizens of the United States. It was held by the Department that, under § 1993, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1268), the children were citizens of the United States; that, in order to conserve such citizenship, they should, upon reaching full age, or within a reasonable time thereafter, come to this country to reside, and perform the duties of citizenship. The Department expressed doubt as to the right of the father to claim the protection of this government in view of the fact that he had left the United States the year fol-

lowing his naturalization, and had resided in Cuba continuously for a period of nineteen years. Nevertheless it was held that the children, until coming of age, were American citizens, and entitled to registration in the consulate as such. Mr. Rockhill to Mr. Williams, MSS. Inst. to Havana, March 16, 1896.

And in the similar case of Ricardo Hernandez the Department said: "The law of the United States declares that children born abroad, whose fathers, at the time of their birth, were citizens of the United States, are themselves citizens of the United States. If Hernandez's father, at the time of the son's birth, was a citizen of the United States, then young Hernandez, under our law, became a citizen. It is not believed that the father, by any act of his, can deprive the son of the status thus acquired. It is understood that, by the Spanish law, he has the option, upon arriving at majority, of electing Spanish nationality. In order to conserve American citizenship, he should, upon reaching full age, or within a reasonable time thereafter, come to the United States to reside and perform the duties appertaining to citizenship. It is my opinion that, until coming of age, young Hernandez should be regarded as an American citizen, and as such he is entitled to a passport upon compliance with the usual requirements." Id. May 1, 1896.

The children (born in Mexico) of Henry S. Schreck, a naturalized citizen of the United States, claimed before the United States and Mexican claims commission, convention of 1868 (15 Stat. at L. 679), as his heirs, damages from Mexico for the seizure and sale in that country of certain goods belonging to the estate of their father. The umpire decided: "As children of a naturalized citizen of the United States, they may be considered to be citizens of the United States in the United States and in every other country except the country of their birth; but the fact of their being born in Mexico gives to the government of

that country the right to claim them in Mexico as citizens of that Republic. The umpire is, therefore, of opinion that, as against Mexico, the heirs of Henry S. Schreck, being born in that Republic, have no standing before the mixed commission, and cannot claim, as citizens of the United States, against the government of their birth." Upon motion for rehearing, however, Mr. Ashton, agent and counsel of the United States, showed that by the Mexican law persons born in Mexico are not natural-born Mexicans unless their fathers before them were Mexicans; that the heirs of Schreck, therefore, not being claimed by the municipal law of Mexico as Mexican citizens, must be deemed to possess in that country the national character attributed to them by the law of the United States. The umpire adopted this view, and made an award in favor of the heirs of Schreck. Moore, *International Arbitrations*, 2450-2453.

In the case of Rafael Franklin Hine, who was born of an American father in Costa Rica, and who, when nineteen years of age, claimed exemption from military service in that country on the ground that he was a citizen of the United States, Acting Secretary Hill in an instruction dated May 7, 1901, to the diplomatic representative of the United States in Costa Rica, said: "The young man was educated in the public and private schools of Costa Rica, has never visited the United States, and is entirely ignorant of the English language. His father was born in the United States, went to Costa Rica when twenty-three years old, married a native Costa-Rican, and died there after five years' residence as a practising physician. Mr. Hine now claims exemption from military service in Costa Rica on the ground that he is an American citizen. You add that Mr. Hine is engaged in the dairy business in San José, and that you do not see that it is his intention to make hereafter his home in the United States. Assuming that the father was an American citizen when the son was born, the latter is an American citizen, accord-

ing to § 1993 of the Revised Statutes of the United States, which provides that a child born outside of the limits of the United States, whose father was at the time of the child's birth a citizen of the United States, is himself a citizen. Of course, no sovereignty can extend its jurisdiction beyond its own territorial limits, so as to relieve those born under and subject to another jurisdiction from their obligations or duties thereto. Therefore, as an American citizen, the young man may be granted a passport upon making satisfactory application therefor. How far the right to protect him may be exerted depends to a considerable extent upon the claims that Costa Rica has upon him under her law, upon which point the Department is not advised. The question of his intention to come to this country will be of more consequence when he shall have reached the age of twenty-one years. Until that time he is not competent to elect expatriation from the United States, and the presumption is in favor of his conservation of the citizenship conferred upon him by his birth as the son of an American citizen." For. Rel. 1901, p. 421.

In the case of the minor children of James W. Smith, an American citizen, who, by voluntarily taking military service in the Mexican army while a law was in existence by which such an act on his part conferred Mexican citizenship, Acting Secretary Seward said: "The two sons of Mr. Smith, aged respectively seven and ten years, at the time of their father's death, were undoubtedly American citizens by birth, inasmuch as the father's change of allegiance occurred after the birth of the youngest child. If within the jurisdiction of the United States, their right to American citizenship would be unimpaired, and, even if within Mexican jurisdiction during minority, they would, in the absence of any Mexican law specifically attaching the altered status of the father to his minor children within

Mexican jurisdiction, be still properly regarded as American citizens. But if there be such a law, or if, on attaining majority, they remain in Mexico and come within any provision of Mexican law making them citizens of that Republic, they could not be regarded as citizens of the United States." Mr. Seward to Mr. Foster, August 13, 1879, For. Rel. 1879, p. 825.

And in 1896 the United States minister at Santiago, Chile, transmitted a copy of an act of the Chilean Congress organizing a national guard, and reported that several American citizens had requested his intervention to secure the exemption of their children born in Chile from service required by that act. He said: "To these applications I have replied that, although by § 1993 of the Revised Statutes of the United States children of American fathers born abroad are citizens of the United States, the law cannot be construed so as to exempt them from the allegiance due to the country of their birth so long as they remain within its territory, provided that by the law of the country where they are born and reside such children are citizens of that country. As by the Chilean Constitution all persons born in Chile are Chilean citizens, I have declined to interfere in these cases." The minister's action was approved by Mr. Olney. For. Rel. 1896, p. 34.

It has been held that, while the right of the child to claim United States citizenship cannot be taken away, it may be suspended by the father's change of allegiance.

In the case of Karl Klingensmeyer, *supra*, whose father had renounced his American citizenship after his son's birth, Mr. Frelinghuysen said: "Assuming that the father resumed German citizenship during the son's minority, what are the son's rights as against this government upon reaching the age of twenty-one years, for there is no doubt that, during minority, his rights, if he had any other than those possessed by his father,

were at least suspended and subject to the father's allegiance." He reached the conclusion that, while the claim of young Klingmeyer to United States citizenship was, on account of his father's voluntary foreign residence and his loss of American citizenship, held in abeyance during the son's residence with his father, he had the right, when he should have attained the age of twenty-one years, of choosing for himself which country he would adhere to.

In the case of Charles L. George it was held that the right of election cannot be divested, either by municipal legislation, or by treaty enactments to which the United States is not a party. The father, Peter George, a native of Germany, came to the United States in 1840, was naturalized in 1848, returned to Germany in 1851, and married there. The son Charles was born in Alsace-Lorraine in 1859, that is, after his father had been residing there eight years. In 1871, Alsace-Lorraine became a German possession. Both father and son continued to reside there until May, 1875, the son being then sixteen years of age, when they came to the United States. They located in Philadelphia, where they resided continuously until 1884. By virtue of his father's citizenship, the son, as a minor, enjoyed all the rights of a citizen, and when he became of suitable age exercised the right of voting. In May, 1884, as he contemplated a journey to Europe, from abundant caution, he took out naturalization papers. In the following month he returned to his birthplace on a temporary visit. He was arrested, charged with violation of military duty, and imprisoned for a period of forty days, and then released upon the petition of his friends. In the diplomatic correspondence which ensued, the German foreign office contended that young George, having been born in Alsace, became a French citizen, under the French law, and was subject to German law after the cession of that province to Germany.

"All persons born in Alsace-Lorraine," said Count Bismarck, "who, according to the French law of the year 1851, were to be held to be Frenchmen, became Germans with the cession of this territory to Germany in so far as they did not make valid choice of the French nationality under the provision of article 2 of the treaty of peace of May 10, 1871." Mr. Bayard, in instructing Mr. Pendleton in regard to the case, said: "The German foreign office seems to have ignored the American citizenship of Mr. C. L. George as the son of a naturalized citizen of the United States, and to have assumed that, having been born in Alsace, he became a citizen of France, under the French law of 1851, and, therefore, was subject to German law as a citizen of Alsace-Lorraine, after its cession to Germany. But, under the rules of international law, the son, having been born in Alsace-Lorraine, of an American father, had the option of remaining there until his majority and electing to take the allegiance of his birth, or of claiming the allegiance of his father. It appears, however, that he did not remain in Alsace until he attained his majority. He came to the United States during his minority, and when he arrived at his majority evinced his election of American citizenship by exercising the rights which pertain thereto, and by other acts indicating the same election. . . . The American citizenship inherited by Mr. George and elected by him when of full age, cannot be divested, either by the municipal laws of Germany, or by a treaty between Germany and France." It was declared that the subsequent taking out of naturalization papers was to be regarded merely as cumulative evidence of election of United States citizenship. "He was already a citizen of the United States," said Mr. Bayard, "and was none the less so because he may have entertained unfounded doubts on the subject, as from his conduct would appear to have been the case." For. Rel. 1886, pp. 317, 325, 327.

The statute declares that the children born abroad to American fathers are citizens of the United States. In the case of John Frederick Pearson, the question arose whether the son, born in China of an American father and a Chinese mother, was a citizen of the United States. It was held that, as Pearson's father was an American citizen, and as the woman's nationality merged on marriage in that of the husband, her nationality previous to marriage would make no difference in the son's nationality, provided he was legitimate. Mr. Bayard to Mr. Smithers, May 4, 1885, 2 Wharton, International Law Dig. p. 418; For. Rel. 1885, p. 171. See also *Ludlam v. Ludlam*, 26 N. Y. 356.

9. Illegitimate children.—The nationality of an illegitimate child born to an American mother abroad would, by the law of nations, follow that of the mother.

It was held in Maryland that children born abroad out of lawful wedlock are not entitled to the benefit of the provisions of the act of Congress of April 14, 1802 (2 Stat. at L. 155, chap. 28, § 4, U. S. Comp. Stat. 1901, p. 1334), which declares that "the children of persons who now are, or have been, citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States." *Guyer v. Smith*, 22 Md. 239, 85 Am. Dec. 650.

In the case of *Acosta y Foster*, which came before the Spanish claims commission in 1882, it was held that, under the laws of the United States, an illegitimate child born abroad of an American woman is not a citizen of the United States. Moore, International Arbitrations, 2462. See letter of Atty. Gen. of N. Y. to Dept. of State, August 16, 1901.

Illegitimate children born to a Chinese woman in China do not become American citizens by the subsequent marriage of the mother to a citizen of the United States. Illegitimate children

follow the status of the mother, and the mother being Chinese, and not capable of being lawfully naturalized under the laws of the United States, her marriage to a citizen of the United States did not confer American citizenship on her. Ass't Sec'y Peirce to Consul at Shanghai, March 27, 1903.

A person born on board an American vessel, of parents who are citizens of the United States, but who are at the time in a foreign country, not with the design of moving thither, but only having touched there in the course of a voyage which the father has made as captain of the vessel, is to be regarded as a citizen of the United States. *United States v. Gordon*, 5 Blatchf. 18, Fed. Cas. No. 15,231.

A child who acquires American citizenship by birth to an American father abroad, under Rev. Stat. § 1993 (U. S. Comp. Stat. 1901, p. 1268), is a natural-born citizen of the United States.

PART II.

CITIZENSHIP

BY

NATURALIZATION.

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CITIZENSHIP BY NATURALIZATION.

CHAPTER I.

NATURALIZATION IN PURSUANCE OF THE GENERAL LAWS OF THE UNITED STATES.

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10. **In general.**— In the United States the naturalization of foreigners is within the exclusive control of the Federal government. It is one of the powers expressly granted by the states to the national government. The Constitution (art. 1, § 8) provided that “the Congress shall have power . . . to establish a uniform rule of naturalization.” Congress has exercised this power, established the rule, and expressly declared that certain foreigners may be naturalized by compliance with it, and not otherwise. See *Chirac v. Chirac*, 2 Wheat. 259, 4 L. ed. 234; *Minneapolis v. Reum*, 6 C. C. A. 31, 12 U. S. App. 446, 56 Fed. 576; *Golden v. Prince*, 3 Wash. C. C. 314, Fed. Cas.

No. 5,509; *Boyd v. Nebraska*, 143 U. S. 160, 36 L. ed. 109, 12 Sup. Ct. Rep. 375.

Naturalization is the act of adopting a foreigner and clothing him with the privileges of a citizen. 9 Ops. Atty. Gen. 359; *Boyd v. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375.

The effect of naturalization under the laws of the United States is nowise dependent upon, or affected by, the laws of the applicant's country. It is immaterial whether he had or had not permission to emigrate from the country of his origin. For. Rel. 1893, p. 499.

11. Who are capable of naturalization; in general.— The first question to be determined is, What persons are capable of naturalization? All aliens are not eligible to citizenship under our laws.

“No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States.” Rev. Stat. § 2171 (U. S. Comp. Stat. 1901, p. 1333).

Rev. Stat. § 2169 (U. S. Comp. Stat. 1901, p. 1333), declares that “the provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity, and to persons of African descent.”

In all the acts of Congress relating to the naturalization of aliens, from that of March 26, 1790 (1 Stat. at L. 103, chap. 3), down to the Revised Statutes, the language is “that any alien, being a free white person, may be admitted to become a citizen,” etc. After the adoption of the 13th Amendment to the Constitution, prohibiting slavery, and the 14th Amendment, declaring who shall be citizens, Congress, in the act of July 14, 1870, amending the naturalization laws, added the following provi-

sion: "That the naturalization laws are hereby extended to aliens of African nativity, and to persons of African descent." 16 Stat. at L. 256, chap. 254.

This was subsequently revised and placed in the Revised Statutes (§ 2169 [U. S. Comp. Stat. 1901, p. 1333]) so as to read: "The provisions of this title shall apply to aliens [being free white persons, and to aliens] of African nativity, and to persons of African descent."

Who are excluded from the privilege of naturalization by the language of the statute? The words of a statute are to be taken in their ordinary sense, unless it can be shown that they are used in a technical sense. Taken in their ordinary meaning, the words of the law exclude all but persons of the Caucasian and African races. From a common, popular standpoint, the races of mankind have been distinguished by difference of color, and they have been classified as the white, black, yellow, and brown. As ordinarily used everywhere in the United States, the words "white person" mean a person of the Caucasian race.

Ethnologists also consider the color of skin the most important criterion for the distinction of race. Blumenbach divided mankind into five principal types,—the Caucasian or white, Mongolian or yellow, Ethiopian or black, American or red, and Malay or brown. Cuvier simplified this classification into Caucasian, Mongol, and Negro, or white, yellow, and black races.

When the words "white persons" were incorporated in the naturalization laws, in 1802, the country was inhabited by three races,—the Caucasian or white race, the Negro or black race, and the American or red race. It is reasonable to infer, therefore, that Congress, in designating the classes of persons who could be naturalized, intended to exclude from the privilege of citizenship all alien races except the Caucasian.

Again, in the first revision of the statutes, in 1873, the words

“being a free white person” were omitted, probably through inadvertence, so that the section read: “An alien may be admitted to become a citizen,” etc. Under the act of February 18, 1875 (18 Stat. at L. 318, chap. 80, U. S. Comp. Stat. 1901, p. 1333), to correct errors and supply omissions in the first revision, this section was amended by restoring these words. In moving the adoption of this amendment in the House of Representatives, it was stated that this omission operated to extend naturalization to all classes of aliens, and that it was only proposed, by restoring these words, to place the law where it stood at the time of the revision. 3 Cong. Record, pt. 2, p. 1081.

Whether viewed in the light of the popular, or of the scientific meaning, or of congressional intent, therefore, the words “white persons” seem to include only individuals of the Caucasian race. Under the statute, therefore, only members of this race, and of the Ethiopian race, can be naturalized.

The courts have, at different times, held that neither Chinese, Japanese, Hawaiians, Burmese, nor Indians can be naturalized.

12. — Chinese.— The question of the right of a court to naturalize a Chinaman came before the circuit court of the United States in 1878, in *Re Ah Yup*, 5 Sawy. 155, Fed. Cas. No. 104, and the court denied the application, on the ground that a Mongolian is not a “white person” within the meaning of the term as used in the naturalization laws of the United States.

In an instruction, October 29, 1878, to Mr. Holcombe, United States minister to China, Mr. Evarts, adverting to this case, said: “Although not accepting as a final decision (not having yet been affirmed by the Supreme Court of the United States), the Department is constrained, on examination of the laws, to believe that the decision is based on a sound appreciation of the law.” MSS. Inst. to China.

Some courts having admitted Chinese to citizenship, the act

of May 6, 1882 (22 Stat. at L. 61, chap. 126, § 14, U. S. Comp. Stat. 1901, p. 1333), in order to prevent such naturalization, and to remove all doubt, provided "that hereafter no state court, or court of the United States, shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed."

In the case of *Re Hong Yen Chang*, 84 Cal. 164, 24 Pac. 156, it was held that a certificate of naturalization showing the naturalization of a person of Mongolian nativity by the judgment of a court is void. To the same effect is *Re Gee Hop*, 71 Fed. 274.

And in *Fong Yue Ting v. United States*, 149 U. S. 716, 37 L. ed. 914, 13 Sup. Ct. Rep. 1016, the United States Supreme Court said: "Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws."

And in *United States v. Wong Kim Ark*, 169 U. S. 649, 42 L. ed. 890, 18 Sup. Ct. Rep. 456, Chief Justice Fuller said: "They (the Chinese) have never been allowed, by our laws, to acquire our nationality."

13. — Indians.— The general statutes of naturalization do not apply to Indians. 7 Ops. Atty. Gen. 746.

In *Re Camille*, 6 Sawy. 541, 6 Fed. 256, the United States circuit court held that a person of half white and half Indian blood is not a "white person," within the meaning of this phrase as used in the naturalization laws, and, therefore, is not entitled to be admitted to citizenship thereunder.

14. — Hawaiians.— In *Re Kanaka Nian*, 6 Utah, 259, 4 L. R. A. 726, 21 Pac. 993, the supreme court of Utah denied the application of a native Hawaiian for admission to citizenship, holding that the applicant was neither a white person nor a person of the African race. The court said: "We are of opinion that the law authorizes the naturalization of aliens of the Cau-

casian or white race and of the African race only, and all other races, among which are the Hawaiians, are excluded." This was prior to the annexation of Hawaii.

15. — Japanese.— In the case of *Re Saito*, 62 Fed. 126, the United States circuit court held that a native of Japan (of the Mongolian race) is not included within the term "white persons," in Rev. Stat. § 2169 (U. S. Comp. Stat. 1901, p. 1333), and hence is not entitled to naturalization. See also *Re Yamashita* (Wash.) 59 L. R. A. 671, 70 Pac. 482.

In the latter case, a native of Japan applied for admission, as an attorney, in the courts of the state of Washington, whose laws preclude the admission of any person who is not a citizen of the United States. Yamashita had obtained from the superior court of Pierce county, Washington, an order admitting him to citizenship. It was held that the judgment upon its face showed that Yamashita was of the Japanese race; that Japanese are not entitled to become citizens of the United States; that, as the court was without authority to pronounce the judgment, its determination was void, and must be disregarded. It was decided that he could not be admitted.

16. — Burmese.— And the city court of Albany, New York, decided against the naturalization of a dark yellow native of Burmah, although he was an educated physician. *Re San C. Po*, 7 Misc. 471, 28 N. Y. Supp. 283.

17. — Mexicans.— But in the case of *Re Rodriguez*, 81 Fed. 337, the United States district court for the western district of Texas held that a native citizen of Mexico, whatever might be his status viewed solely from the standpoint of the ethnologist, is embraced within the spirit and intent of our naturalization laws. In this case it was contended that Rodriguez was excluded from the privilege of naturalization under Rev. Stat. § 2169 (U. S. Comp. Stat. 1901, p. 1333), because of his color, the authorities

relied upon being: *Re Ah Yup*, 5 Sawy. 155, Fed. Cas. No. 104; *Re Camille*, 6 Sawy. 541, 6 Fed. 256; *Re Kanaka Nian*, 6 Utah, 259, 4 L. R. A. 726, 21 Pac. 993; and *Re Saito*, 62 Fed. 126.

The court analyzes the decision in *Ah Yup's Case*, which is termed the leading one. It says that the opinion of Judge Sawyer is by no means decisive of the present question, as his language may well convey the meaning that the amendment of the naturalization statutes referred to by him (the amendment striking the word "white" therefrom) was intended solely as a prohibition against the naturalization of members of the Mongolian race. The court refers to the act of May 6, 1882 (22 Stat. at L. 61, chap. 126, U. S. Comp. Stat. 1901, p. 1333), expressly forbidding the naturalization of Chinese, and asks why, if the Chinese were denied the right to become naturalized citizens, under laws existing when *Re Ah Yup* was decided, did Congress enact this prohibitory statute? Says the court: "Indeed, it is a debatable question whether the term 'free white person,' as used in the original act of 1790, was not employed for the sole purpose of withholding the right of citizenship from the black or African race and the Indian then inhabiting this country." Continuing, the court says: "It is not deemed material to inquire to what race ethnological writers would assign the present applicant. If the strict scientific classification of the anthropologist should be adopted, he would probably not be classed as white. It is certain he is not an African nor a person of African descent. According to his own statement he is a 'pure-blooded Mexican,' bearing no relation to the Aztecs or original races of Mexico. Being, then, a citizen of Mexico, may he be naturalized pursuant to the laws of Congress? If debarred by the strict letter of the law from receiving letters of citizenship, is he embraced within the intent and meaning of the statute? If he falls within the intent and meaning of the law, his

application should be granted notwithstanding the letter of the statute may be against him." The court then quotes from the Constitution of the Republic of Texas and the Constitution, laws, and treaties of the United States, which, he says, disclose that both that Republic and the United States have freely, during the past sixty years, conferred upon Mexicans the rights and privileges of American citizenship,—not individually, but by various collective acts of naturalization. He also quotes Rev. Stat. § 1999 (U. S. Comp. Stat. 1901, p. 1269), recognizing the right of expatriation, and reciting that this government has freely received emigrants from all nations, and invested them with the rights of citizenship. He concludes: "When all the foregoing laws, treaties, and constitutional provisions are considered, which either affirmatively confer the rights of citizenship upon Mexicans, or tacitly recognize in them the right of individual naturalization, the conclusion forces itself upon the mind that citizens of Mexico are eligible to American citizenship, and may be individually naturalized by complying with the provisions of our [naturalization] laws." The applicant was admitted to naturalization.

This decision is unique. The fact that the United States has by collective acts conferred upon Mexicans the rights and privileges of American citizenship affords no basis for the argument that Mexicans are eligible to naturalization under our general naturalization statutes. See *Re Yamashita* (Wash.) 59 L. R. A. 671, 70 Pac. 482. This decision stands alone in another particular, also. The applicant was ignorant, and was unable to read or write, and did not understand the principles of the Constitution, yet the court held, in the face of several decisions to the contrary, that he was entitled to be naturalized, inasmuch as it appeared that he was peaceable, industrious, of a good moral character, and law-abiding.

18. — **Women; in general.**— The naturalization laws include females as well as males. *Brown v. Shilling*, 9 Md. 82.

It is apparent that, from the commencement of legislation upon naturalization, alien women could be made citizens by naturalization. *Minor v. Happersett*, 21 Wall. 162, 22 L. ed. 627.

19. — **Married women.**— And it has been held that an alien wife might be naturalized without the concurrence of her husband. *Priest v. Cummings*, 16 Wend. 617; see also *Comitis v. Parkerson*, 22 L. R. A. 148, 56 Fed. 556, holding that the relation of husband and wife is not inconsistent with one being a citizen and the other being an alien.

A *feme covert* was admitted to be naturalized by the United States circuit court for the District of Columbia. *Ex parte Pic*, 1 Cranch, C. C. 372, Fed. Cas. No. 11,118.

20. **Declaration of intention; in general.**—The first step in the process of naturalization is the declaration of intention.

The applicant shall declare on oath, before a court of record, at least two years prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce the allegiance he then owes. Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329).

As to the time of making this declaration, it may be made immediately after the arrival of the alien in this country. It must be made at least two years before he is admitted to citizenship.

When an alien declares his intention to become a citizen he is entitled to a certificate, a certified copy of such declaration, duly attested by the clerk and the seal of the court.

In Hawaii.—For the purposes of naturalization under the laws of the United States, residence in the Hawaiian islands prior to the taking effect of this act shall be deemed equivalent to residence in the United States, and in the territory of Hawaii;

and the requirement of a previous declaration of intention to become a citizen of the United States, and to renounce former allegiance, shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this act; but all other provisions of the laws of the United States relating to naturalization shall, so far as applicable, apply to persons in said islands. Act of April 30, 1900 (31 Stat. at L. 161, chap. 339, § 100).

21. Jurisdiction of courts.—The declaration of intention must be made before a court having jurisdiction under the statute. The language of the statute is, “before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction and a seal and clerk.”

The act of February 1, 1876 (19 Stat. at L. 2, chap. 5, U. S. Comp. Stat. 1901, p. 1331), provides that the declaration may be made before the clerk of any of the courts above named.

It has been held in Michigan and Wisconsin state courts that it is sufficient if the declaration is made before the clerk out of his office, and becomes a part of his records when filed. *State ex rel. Hopkins v. Olin*, 23 Wis. 309; *Andres v. Arnold*, 77 Mich. 85, 6 L. R. A. 238, 43 N. W. 857. But in the case of *Re Langtry*, 31 Fed. 879, where the clerk of the United States circuit court had taken the necessary records and seal of the court to the private residence of Mrs. Langtry and received her declaration of intention there, the court (Mr. Justice Field) held that the declaration must be made either in the clerk's office or in open court. The court said that persons seeking the great privilege of American citizenship ought to consider it of sufficient value to attend where the records of the court are held in proper legal custody. The justice called attention to the fact that in some states a man is allowed to vote as soon as he makes his declaration of intention

to become a citizen, and said that, if a clerk of the court, or his deputy, could go around the country taking declarations of intention and administering oaths, dangerous consequences might follow. He said that Congress, in authorizing the declaration to be made before the clerk, could not have contemplated the granting of authority to clerks to remove records from the proper place of their custody for the accommodation of parties. See also *St. Scola's Case*, 8 Pa. Co. Ct. 344.

State courts, in admitting aliens, act as United States courts. *Re Christern*, 11 Jones & S. 523.

City, police, and county courts in various states, when courts of record and having a clerk, have been held entitled to take this declaration. *United States v. Power*, 14 Blatchf. 223, Fed. Cas. No. 16,080; *Gladhill, Petitioner*, 8 Met. 168; *Ex parte Gregg*, 2 Curt. 98, Fed. Cas. No. 3,380; *State v. Whittemore*, 50 N. H. 245, 9 Am. Rep. 196; *Re Conner*, 39 Cal. 98, 2 Am. Rep. 427; *Levy's Case*, 14 Ops. Atty. Gen. 509; *State ex rel. Fossler v. Webster*, 7 Neb. 469; *Morgan v. Dudley*, 18 B. Mon. 693, 68 Am. Dec. 735; *People v. McGowan*, 77 Ill. 644, 20 Am. Rep. 254.

A court with no clerk or recording officer other than the judge of the court has been held to have no jurisdiction of applications for naturalization, or to receive declarations of intention. *Mills v. McCabe*, 44 Ill. 194; *State ex rel. Fossler v. Webster*, 7 Neb. 469; *Re Dean*, 83 Me. 493, 13 L. R. A. 229, 22 Atl. 385.

The police court of the District of Columbia has no power to naturalize foreigners. Rev. Stat. § 2173 (U. S. Comp. Stat. 1901, p. 1334).

It is not necessary that the court have all the common-law jurisdiction that pertains to all classes of action, but merely that it exercise its powers according to the course of the com-

mon law. *Re Dean*, 83 Me. 493, 13 L. R. A. 229, 22 Atl. 385; *Re Conner*, 39 Cal. 98, 2 Am. Rep. 427; *People v. McGowan*, 77 Ill. 644, 20 Am. Rep. 254; *United States v. Lehman*, 39 Fed. 49.

The state legislature may prescribe and limit the times when and during which applications for naturalization may be heard in the state courts. *State ex rel. Rushworth v. Inferior Court of Common Pleas Judges* (N. J. L.) 30 L. R. A. 761. To this report of the case is appended an elaborate note relating to the powers of state legislatures and courts in respect to naturalization, which contains an exhaustive citation of authorities.

22. — Army, Navy, and Marine Corps service.— Aliens who have enlisted and who have been honorably discharged from the United States Army, Navy, or Marine Corps, may be admitted to citizenship without any previous declaration of intention. Rev. Stat. § 2166 (28 Stat. at L. 124, chap. 165, U. S. Comp. Stat. 1901, p. 1332).

23. — Minor residents.—By Rev. Stat. § 2167 (U. S. Comp. Stat. 1901, p. 1332), aliens who have come to the United States at the age of eighteen years or under may, after reaching full age, and after the requisite residence here, be admitted without having made the declaration of intention required by § 2165 (U. S. Comp. Stat. 1901, p. 1332).

Rev. Stat. § 2167 (U. S. Comp. Stat. 1901, p. 1332), which allows aliens coming to this country at the age of eighteen or under to be admitted to naturalization after reaching majority and after five years' residence here, without having made the declaration of intention required by Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329), requires the applicant to make this declaration at the time of his admission, and to further declare on oath and prove to the satisfaction of the court that for two years next

preceding it has been his bona fide intention to become a citizen of the United States. The oath of the applicant as to his intention must be supplemented by proof, and the vague oral statement of a single witness is not sufficient as a substitute for the documentary evidence required by § 2165. *Re Fronascone*, 99 Fed. 48.

24. Rights conferred by declaration of intention; in general.*—

Mere declaration of intention does not confer citizenship upon the declarant. The declaration is merely an expression of purpose, and has not the effect, either of naturalization or expatriation. By it, the alien simply records his intention to renounce his present allegiance on becoming a citizen of the United States. He remains an alien until naturalization is complete according to our laws. *Lanz v. Randall*, 4 Dill. 425, Fed. Cas. No. 8,080; *Maloy v. Duden*, 25 Fed. 673; *Re Moses*, 83 Fed. 995.

“The law, justly regarding a change in his allegiance by a foreigner as an act of grave importance, wisely provides that there shall be two steps in the process. By the first, the purpose of change is announced. Between this and actual naturalization the lapse of a considerable interval is required in order

*As to the general rights of aliens irrespective of those acquired by declaration of intention, see the following editorial notes collecting and discussing the authorities bearing on the questions involved:

Right of aliens to equal protection of the laws,—*Louisville Safety Vault & T. Co. v. Louisville & N. R. Co.* (Ky.) 14 L. R. A. 583; aliens as grand jurors,—*State v. Russell* (Iowa) 28 L. R. A. 195; disabilities of; escheat of property,—*American Mortg. Co. v. Tennille* (Ga.) 12 L. R. A. 529; alien's right to inherit,—*Easton v. Huott* (Iowa) 31 L. R. A. 177; effect of statutes and constitutions upon inheritance through an alien,—*De Wolf v. Middleton* (R. I.) 31 L. R. A. 146; effect of statutes and constitutions upon inheritance by or from an alien,—*Beavan v. Went* (Ill.) 31 L. R. A. 85; effect of treaties upon alien's right to inherit,—*Rivner's Succession* (La. Ann.) 32 L. R. A. 177.

that the final step may be taken with due deliberation." For. Rel. 1871, p. 254, Sec'y Fish to Mr. Wing, Inst. to Ecuador.

From the standpoint of the government, also, it is undesirable that persons inexperienced in our institutions should take part in matters which they do not understand. The period of probation is designed to afford them an opportunity to become familiar with our mode of government, and to fit themselves for the performance of the duties of citizenship. Upon final hearing, the court, for good reasons, may refuse to complete the naturalization.

Does the declaration of intention confer any rights of citizenship upon an alien? While the laws of several of the states of the Union extend the right of suffrage to aliens who have declared their intention to become citizens of the United States, a state cannot make the subject of a foreign government a citizen of the United States, or confer on him the rights and privileges appertaining to such citizenship.

As is said by the circuit court of the United States in the case of *Minneapolis v. Reum*, 6 C. C. A. 31, 12 U. S. App. 446, 56 Fed. 580: "A state may confer on foreign citizens or subjects all the rights and privileges it has the power to bestow, but when it has done all this, it has not naturalized them. They are foreign citizens or subjects still, within the meaning of the Constitution and laws of the United States." See also *Boyd v. Nebraska*, 143 U. S. 160, 36 L. ed. 109, 12 Sup. Ct. Rep. 375.

A mere "declaration of intention" by a foreigner to become a citizen does not deprive a court of the United States of jurisdiction over a suit to which he is a party,—as a suit against a foreign citizen or subject. The final renunciation of his foreign allegiance is necessary. *Baird v. Byrne*, 3 Wall. Jr. 1, Fed. Cas. No. 757.

Is a person who has declared his intention to become a citizen clothed with the rights of citizenship while without the United States? Upon principle, it seems clear that this question should be answered in the negative. As he is not a citizen, and is not invested with the rights of Federal citizenship while in the United States, it is not perceived upon what ground he can claim the privileges of American citizenship while in a foreign country. As we have seen, the declarant does not renounce his original allegiance, but remains an alien until his naturalization is completed. If he goes back to his native country, he returns as a subject or citizen thereof.

By treaties with Austria, Baden, Bavaria, Hesse, North Germany, Sweden and Norway, and Württemberg, it is expressly provided that a declaration of intention to become a citizen shall not have the effect of naturalization.

It has been repeatedly held by the Department of State that the declaration of intention to become a citizen does not so clothe the individual with the nationality of this country as to enable him to return to his native land without being subject to all the laws thereof. 2 Wharton, *International Law* Dig. p. 359.

Where declarant, a native Turk, contemplating a visit to Turkey, inquired whether he could count upon the intervention of this government in his behalf, Mr. Bayard held that, "so far as political rights are concerned, a mere declaration of intention to become a citizen of the United States would give . . . [declarant] no title to claim the intervention of the United States should he return to his native land." 2 Wharton, *International Law* Dig. p. 360.

And in a similar case it was held: "Until the declarant has perfected his naturalization by due course of law, and obtained his final papers, he cannot claim the protection of this government in case of his voluntary return to Turkey." Mr. Bayard

to Mr. Crain, January 28, 1886, MSS. Dom. Let. See also Mr. Hay to Mr. Bell, April 7, 1899, MSS. Dom. Let.

With the exception of the case of Burnato, no instance is found where this government has intervened, in the country of his origin, in behalf of an alien who has merely declared his intention to become a citizen. This case is sometimes cited as a precedent for extending protection to such persons, but an examination of the correspondence shows that it is subject to considerable qualification. Burnato, a native of Mexico, came to Texas in 1866, and in 1872 declared his intention to become a citizen of the United States. In 1879 he was arrested by the Mexican authorities at Piedras Negras for smuggling liquor across the border, was tried and sentenced to five years' service as a soldier in the Mexican Army. In October, 1880, the impressment of Burnato and several others, citizens of the United States, having come to the notice of our government, the Department of State directed the United States minister to demand of the Mexican government their instant release. "If the fact of Burnato's not being a citizen of the United States should be brought up by the Mexican government" (wrote Assistant Secretary Hunter) "you will suggest that for fourteen years he has been a permanent resident of this country, of which he had declared his intention to become a citizen, and has thus been under the protection of this government, its laws and treaties, and it would seem very ungracious for the Mexican government to insist, under these circumstances, on making any unfavorable distinction in his case." Acting Sec'y Hunter to Mr. Morgan, For. Rel. 1880, p. 777.

Mr. Morgan in his note to the Mexican government refers to the men as "citizens of the United States," and it does not appear that the question of Burnato's citizenship was raised at all. It transpired that he had been dismissed from the Army

some months previous. Subsequently Mr. Morgan wrote the Department asking instructions in regard to demanding an indemnity, and expressing doubts as to Burnato's title to protection. The Department, under date of September 14, 1881, replied as follows: "Adverting to your inquiries respecting Felipe Burnato, one of the persons impressed, I have to state that he will not be entitled to the protection of this government without having acquired full citizenship." Acting Sec'y Hitt to Mr. Morgan, MSS. Dip. Inst. to Mexico.

Although a mere declaration of intent does not confer citizenship, yet, under peculiar circumstances in a Mohammedan or semi-barbarous land, it may sustain an appeal to the good offices of a diplomatic officer of the United States in such land. Sec'y Cass to Mr. De Leon, U. S. Consul General at Alexandria, Egypt, August 18, 1858.

In a few instances the Department of State has held that the declarant acquires, by his declaration of intention, a quasi right to the protection of this government while in a third country. Of these cases, the best known is that of Martin Koszta, in which an extreme position was taken by this government. This case has been criticised, and has been explained and qualified, by the Department of State. Koszta was an Austrian subject, who engaged in the Hungarian rebellion of 1848-9. At the end of the rebellion he escaped to Turkey, whence he came to the United States. He remained in this country about two years, during which time he made the statutory declaration of intention to become an American citizen. He then returned to Turkey on business. He obtained from the United States consul at Smyrna, a traveling pass, stating that he was entitled to American protection. While at Smyrna he was arrested by Austrian authorities and put on board an Austrian war vessel

for conveyance to Trieste. He managed to communicate with the captain of an American war vessel which was lying in the same port. This officer demanded the release of Koszta. The Austrian commander refused. Thereupon the American officer trained his guns upon the Austrian vessel and declared that if an attempt was made to leave the port with Koszta on board he would blow the vessel to pieces. As a conflict between the two ships would have been attended with great danger to the shipping in the port and to the town, the matter was temporarily settled by the delivery of the prisoner to the French consul, to be kept until the governments concerned should have an opportunity of arriving at a decision. The Austrian chargé d'affaires at Washington, Chevalier Hulsemann, presented a formal remonstrance to the United States government, protesting against the claim of the United States of the right to afford protection to Koszta, and calling on them to disavow the conduct of their agents, and to grant reparation for the insult offered to the Austrian flag. Secretary Marcy replied, contending that, although Koszta had not yet been naturalized, he was, at the time he was seized and imprisoned at Smyrna, clothed with American nationality, and that in virtue thereof the government of the United States was authorized to extend to him its protection at home and abroad. Mr. Marcy maintained that national character, according to the law of nations, depended upon domicile, and that, as Koszta had a domicile in the United States, he was vested with American nationality. The matter was finally compromised by an arrangement between the American and Austrian legations at Constantinople, that Koszta should be shipped off to the United States, the Austrian government reserving the right to proceed against him should he be again found in Ottoman territory.

The position taken by Mr. Marcy, that mere domicile in the

United States confers citizenship and the right to protection in another country, is held by such eminent writers on international law, as Hall and Cockburn, to be untenable. The former (Hall, *International Law*, p. 239) says: "Domicil no doubt imparts national character for certain purposes; but those purposes, so far as they have to do with public international law, are connected with the rules of war alone, and Mr. Marcy's contention was wholly destitute of legal foundation." And in a note on the same page the author further says that Mr. Marcy's doctrine was strangely inconsistent with the law of the United States at the period when he wrote, as at that time persons of foreign nationality, who had declared their intention of becoming citizens, were incapable of receiving United States passports, and consequently could not have been regarded as subjects. He refers to the passport given Koszta by the United States consul at Smyrna in contravention of the laws of the United States as obviously a mere piece of waste paper. Cockburn says: "The reasoning of Mr. Marcy, which is remarkable for its boldness in carrying the doctrine of acquired nationality further than it ever has been carried, and in which the effect of domicil in respect of civil consequences is confounded with its effect as to political consequences, is altogether inadmissible. Domicil, and even residence, in a particular country, entitles the party to the protection of that country only so long as he is within it; and the effect of such a rule as that contended for by Mr. Marcy would be to introduce the most lamentable confusion into this branch of the public law. Naturalization is generally, and should be always, accompanied by some authentic act, which can be referred to, and speaks authoritatively. But if mere domicil were to give the rights of citizenship, every case would necessitate a judicial inquiry upon a matter which every lawyer knows to be, depending, as it does, on intention,

a question often most difficult of solution." *Nationality*, p. 122. Mr. Cockburn's opinion of the Koszta case is given in a brief note at the bottom of the page just given, as follows: "Both parties were equally in the wrong. The Austrians had no pretense of right for seizing Koszta on Turkish territory. . . . On the other hand, the American authorities had no right to claim Koszta as an American subject, as he had not become naturalized. The party really entitled to complain was the Ottoman government, which refused the application of the Austrians for leave to arrest Koszta, and protested against the outrage offered to their authority, but whose protest does not appear to have been heeded."

Just prior to, and during the Cuban insurrection of 1869, many Cubans declared their intention to become citizens of the United States, and after doing so returned to Cuba. The United States consul at Trinidad interfered in behalf of several of these persons, claiming that they were American citizens, and asked the Department to approve his action. This the Department declined to do, in the following instruction, dated May 12, 1869, in the course of which Mr. Marcy's note in the Koszta case was explained and qualified: "The late distinguished Secretary of State, Mr. Marcy, was very careful in his elaborate letter concerning the case of Martin Koszta not to commit this government to the obligation, or to the propriety, of using the force of the nation for the protection of foreign-born persons who, after declaring their intention to become at some future time citizens of the United States, leave its shores to return to their native country. . . . He took special care to insist that the case was to be judged, not by the municipal laws of the United States, not by the local laws of Turkey, not by the conventions between Turkey and Austria, but by the great principles of international law. It is true that

in the concluding part of that masterly despatch he did say that a nation might, at its pleasure, clothe with the rights of its nationality persons not citizens, who were permanently domiciled in its borders. But it will be observed by the careful reader of that letter that this portion is supplemental, merely, to the main line of the great argument. . . . To extend this principle beyond the careful limitation put upon it by Secretary Marcy would be dangerous to the peace of the country. It has been repeatedly decided by this Department that the declaration of intention to become a citizen does not, in the absence of treaty stipulations, so clothe the individual with the nationality of this country as to enable him to return to his native land without being necessarily subject to all the laws thereof. In the present unhappy state of things in Cuba the Secretary of State can see no reason for departing from so well-established and so wise a rule. . . . He earnestly exhorts you, and all other consuls of the United States, to spare no effort to protect the lives, the property, and the rights of American citizens in this emergency, and he will see with satisfaction any unofficial efforts you may make to shield the persons of those who have declared their intention to become citizens from the barbarities of the Spanish Volunteers, but he desires me to direct you hereafter in your official action to observe the rule laid down for your guidance in this instruction." Mr. Davis, Asst. Sec'y to Mr. Fox, U. S. Consul Trinidad, S. Ex. Doc. 108, 41st Cong. 2d Session, pp. 202, 203.

And Secretary Olney in an instruction to the United States minister in China, January 13, 1897, said: "The somewhat extreme position taken by Mr. Marcy in the Koszta case, that the declarant is followed, during sojourn in a third country, by the protection of this government, has since been necessarily regarded as applying particularly to the peculiar circumstances

in which it originated, and to relate only to the protection of such a declarant in a third country against arbitrary seizure by the government of the country of his origin. . . . It is established by the practical interpretation and application of domestic statutes, and by various treaties of naturalization concluded with foreign states, that a mere declaration of intention to become a citizen cannot clothe the declarant with any of the international rights of citizenship." Mr. Olney to Mr. Denby, MSS. Dip. Inst. to China, For. Rel. 1896, p. 92. See also Secretary Hay to Mr. McKinney, March 20, 1899.

Persons who have merely declared their intention to become citizens of the United States are not entitled to passports, as Rev. Stat. § 4076 (U. S. Comp. Stat. 1901, p. 2765) provides that "no passport shall be granted or issued to, or verified for, any other persons than citizens of the United States."*

25. — Merchant seamen.—An exception is made in our laws in the case of a seaman who declares his intention to become a citizen and serves upon a merchant vessel of the United States. Section 2174, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1334), provides that every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and subsequently serves three years on a merchant vessel of the United States, may, on application to a competent court and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention, be admitted a citizen of the United States. This section declares, further, that "every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall

*This section of the Revised Statutes was amended by the act of June 14, 1902 (32 Stat. at L. 386, chap. 1088), so as to permit the issuance of passports to residents of the insular possessions of the United States.

have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen."

This section of the Revised Statutes is § 29 of the act of June 7, 1872 (17 Stat. at L. 268, chap. 322, U. S. Comp. Stat. 1901, p 1334), which was entitled "An Act to Authorize the Appointment of Shipping Commissioners . . . to Superintend the Shipping and Discharge of Seamen Engaged in Merchant Ships Belonging to the United States, and for the Further Protection of Seamen."

In the case of Gustav Richelieu, a native of France, who, in 1872, declared his intention to become a citizen of the United States, and subsequently served as seaman and steward on American merchant vessels for more than twenty years, it was held that he was entitled, under the provisions of § 2174 (U. S. Comp. Stat. 1901, p. 1334), to the protection of the United States, and a claim in his behalf for arbitrary arrest and imprisonment by the Spanish authorities in Cuba was presented to the government of Spain by the Department of State. Acting Sec'y Rockhill to Mr. Taylor, August 31, 1896, MSS. Dip. Inst. to Spain. The Spanish treaty claims commission, before which this claim subsequently came, made an award of \$5,000 in favor of Richelieu.

This does not extend to the naval service.

The act of June 9, 1874 (18 Stat. at L. 64, chap. 260, U. S. Comp. Stat. 1901, p. 3064), provides that none of the provisions of the act of 1872 (§ 2174, U. S. Comp. Stat. 1901, p. 1334) "shall apply to sail or steam vessels engaged in the

coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage."

26. — Decisions of international claims commissions as to effect of declaration of intention.—International claims commissions to which the United States has been a party have universally decided, whenever the question has been presented, that mere declaration of intention gave the person no standing before a commission as a citizen of the United States.

In a case coming before the commission under the convention of 1839 (8 Stat. at L. 526), between the United States and Mexico,—that of Santangelo against Mexico,—the claimant, a native of Italy, in 1824, declared his intention to become a citizen of the United States. In the following year he went to Mexico, where he discussed in the press certain questions of public interest. On July 1, 1826, he was informed that he must leave Mexico within twenty-four hours, and a few days afterwards he was sent under escort to Vera Cruz and banished from the country. He was not finally admitted to citizenship in the United States until 1829. The American commissioners contended that he was entitled to an award as "an inchoate citizen of the United States in the year 1826," as well as by virtue of his full citizenship subsequently acquired, which, they argued, conferred upon him a right to the support of the United States in obtaining redress from Mexico for an injury done him prior to his naturalization. The Mexican commissioners holding a contrary view, the case was referred to the umpire, who decided that the claim was not within the competence of the commission, thus rejecting the theory of the American commissioners. Moore, *International Arbitrations*, 2549, 2550.

In the claim of John Ehlers against Mexico, which was presented to the commissioners under the act of 1849 (9 Stat. at L. 393, chap. 107), the commissioners said: "The claimant filed his declaration of intention to become a citizen of the United States in 1818, but was not in fact admitted as a citizen according to the act of Congress until the year of 1846. A mere declaration of intention to become a citizen of the United States does not vest in the party any political rights. The responsibility of a government to protect a citizen is founded on the right which a government has to his services; and, until a party has gone through the forms of law required to establish his character as a citizen, the latter cannot be said to owe allegiance to the government he has signified his intention to obey, nor can such government claim his services. The Congress of the United States has pointed out the only mode by which an alien can become a citizen, and until he has complied with the law he is not entitled to its benefits. The claimant was not a citizen of the United States when the claim he now presents had its origin, and the board has decided in several cases that a claimant must have been a citizen at the origin of the claim to entitle him to the benefits of the treaty of the 2d of February, 1848" (9 Stat. at L. 922). Moore, *International Arbitrations*, 2551, 2552.

In the case of *George Adlam v. The United States*, Moore, *International Arbitrations*, 2552, 2553, before the claims commission under the treaty of Washington of May 8, 1871, between the United States and Great Britain (17 Stat. at L. 863), it appeared that the claimant, who was born in London in 1827, emigrated to the United States in 1850, that he had since continuously resided in the latter country, and that, in 1859, he declared his intention to become a citizen of the United States. The United States demurred to the memorial on the ground, among others, that the claimant was not a

British subject within the meaning of the treaty; that the declaration of intention was, "of itself, a complete renunciation of all claim upon the intervention or protection of the sovereign" whose allegiance he had announced his intention to abjure; that this declaration, by the laws of many, if not all, of the United States, gave him, of itself, many of the rights of a citizen; that it certainly put him, so long as he remained in the United States, under the protection of that government for international purposes; that in the case of Koszta it was asserted by the United States as a sufficient ground for protection even while abroad; and that it subjected the claimant, by the laws and usages of the United States, to conscription and enrollment for military service. Counsel for Great Britain replied that the claimant's declaration of intention worked "no change in his status under the law of nations;" that the intention so declared might be abandoned at pleasure; that, while it "might furnish to his sovereign a sufficient reason to decline interference in his behalf," it "did not purport to bring him under any new obligation to the country which he then intended to adopt;" that the British government had not declined to protect him, but, on the contrary, presented his claim for indemnity; that the declaration gave him no rights "as a citizen of the United States;" that the rights which might result under state laws did not affect his condition as an alien; that he could not so much as claim from the United States a passport for his protection abroad; that the case of Koszta was without precedent, and had been repudiated by the United States itself, so far as it had been appealed to as recognizing the right of persons, by virtue of a declaration of intention, to be considered as citizens of the United States; that the statute of the United States authorizing the conscription of such persons did not pretend to change their allegiance, and gave them no rights or privileges in consequence

of the conscription. Similar facts and arguments were presented in other cases. The commissioners unanimously rendered the following opinion: "The question is raised as to whether, in consequence of the claimants having declared their intention to become citizens of the United States and to renounce their allegiance to Her Britannic Majesty, they have ceased to be British subjects within the meaning of the treaty. We are of opinion that, notwithstanding the claimants having expressed this intention, they still remain British subjects until, the necessary formalities having been completed, they acted upon the intention so expressed."

In the case of *Wilson v. Chile*, Moore, International Arbitrations, 2553 *et seq.*, United States and Chilean claims commission of 1892, the claimant was a native of Sweden, who, in 1869, declared his intention to become a citizen of the United States. He was not admitted to citizenship, however, until 1893. His claim arose from the destruction of property at Iquique, Chile, in 1891, during the conflict between the Balmacedists and the Congressionalist party. The Chilean government demurred to the memorial. The commission said: "We are of opinion that, according to the showing made by the memorialist himself, this commission cannot take jurisdiction of his claim. By the express terms of the convention under which this commission has been created, its jurisdiction is confined to claims on the part of the citizens of the two governments, respectively. The wrongs and injuries complained of were committed on the 19th of February, 1891. At that time the claimant was not a citizen of the United States, and did not become such until the 11th day of October, 1893. It is true that on the 23d of July, 1869, he declared his intention to become a citizen of the United States, but that declaration did not make him a citizen. It was only an incipient step in that

direction. . . . According to the plain and explicit provisions of law, both constitutional and statutory, the claimant was not a citizen of the United States at the time he sustained the damages and losses complained of. Nor could the United States recognize him as such without violating a solemn treaty stipulation made with the government of Sweden. The last clause of article 1 of the convention, relative to naturalization, between the President of the United States of America and His Majesty the King of Sweden and Norway, proclaimed January 12, 1872 (17 Stat. at L. 809), reads as follows: 'The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of citizenship legally acquired.' It also appears from the diplomatic correspondence of the State Department that the government of the United States has uniformly held that a mere declaration of intention to become a citizen is not sufficient to clothe a person with the rights of citizenship in the United States. Inasmuch as the memorial does not show that the claimant was a citizen of the United States on the 19th day of February, 1891, when the alleged losses occurred, we decide that the demurrer should be sustained, and the claim disallowed for want of jurisdiction."

27. Widow and children of deceased declarant.—Where an alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized, the widow and children may become citizens by taking the oaths required by law. Rev. Stat. § 2168 (U. S. Comp. Stat. 1901, p. 1332).

28. Status conferred upon minors by declaration of intention of parent.—Section 2172, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1334), declares that the minor children of persons duly naturalized in the United States shall, if dwelling in the United States, be considered as citizens thereof. The United States Supreme Court in the case of *Boyd v. Nebraska*, 143 U. S. 178,

36 L. ed. 115, 12 Sup. Ct. Rep. 375, declared that minors acquire an inchoate status by the declaration of intention on the part of their parents; that this status is not necessarily lost if the father fails to complete his naturalization before the son attains majority, but the son may elect to hold fast to the citizenship which the act of the father has initiated for him, and apply for admission as a citizen, or repudiate the status impressed upon him, and determine that he will accept allegiance to some foreign potentate or power.

***29. Continued residence of applicant for naturalization.—**

Before an alien can acquire citizenship in the United States he must have resided here at least five years. Section 2165 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 1329) provides that "it shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least." The reason for the requirement of such preliminary residence is obvious. It enables the applicant to become acquainted with the character of our institutions. It tests the sincerity of his desire for citizenship.

As Secretary Fish said in 1871: "The law, justly regarding a change in his allegiance by a foreigner as an act of grave importance, wisely provides that there shall be two steps in the process. By the first, the purpose of change is announced. Between this and actual naturalization the lapse of a considerable interval is required, in order that the final step may be taken with due deliberation. Persons who may have declared their intention to become citizens often change their minds, and fail to carry that intention into effect. They have seen occasion to avail themselves of the *locus penitentiæ* which the law allows." For. Rel. 1871, p. 254.

This residence must be continuous. Section 2170 (U. S. Comp. Stat. 1901, p. 1333) declares that "no alien shall be ad-

*See article on this subject by the author in 29 American Law Review, 52.

mitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States." What is meant by continued residence? Can a foreigner after making the formal declaration of intention to become a citizen, leave the United States for any purpose, or for any period, without interrupting the continuity of his residence and forfeiting the benefits acquired thereby? Little light is thrown upon this inquiry by the decisions of our courts, and text-writers seem to give the matter little attention.

In its more restricted meaning the word "residence" denotes a person's habitual physical presence in a country or place. In its broad sense it means a place of abode, selected with the intention of remaining permanently or for an indefinite period. Taken in its broader sense, temporary absence from the United States, upon business or pleasure, might not be incompatible with continued residence here. The sole criterion would be the intention of the party. To determine this it would be proper to take into consideration the length of the absence, its purpose, and the circumstances surrounding the case. In a case arising under the treaty of 1868 (15 Stat. at L. 615), between the United States and the North German Confederation, the opinion was expressed by the Attorney General that the residence of an applicant for naturalization would not be interrupted by "a transient absence for business, pleasure, or other occasion, with the intention of returning." *Stern's Case*, 13 Ops. Atty. Gen. 376. On the other hand, one who, immediately after declaring his intention to become a citizen of the United States, removed to Mexico and there engaged in business, was deemed to have abandoned his declared intention to become an American citizen. 2 Wharton, International Law Dig. p. 360.

The more logical and rational construction of the language of the law would admit a brief temporary absence from the United

States during the period of probation without interruption of the continued residence required by the statute. A study of the history of our naturalization legislation, however, does not clearly show this to have been the intention of Congress. The earliest Federal law relative to the naturalization of aliens, the act of March 26, 1790 (1 Stat. at L. 103, chap. 3), provided that "any alien . . . who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof." By act of January 29, 1795 (1 Stat. at L. 414, chap. 20), a preliminary declaration of intention was provided for, and the applicant was required to declare "that he has resided within the United States five years at least." The act of June 18, 1798 (1 Stat. at L. 566, chap. 54), required the applicant to prove "that he has resided within the United States fourteen years at least." This law was repealed by the act of April 14, 1802 (2 Stat. at L. 153, chap. 28, U. S. Comp. Stat. 1901, p. 1329), which made it the duty of the court admitting the applicant to satisfy itself "that he has resided within the United States five years at least." This act also provided that the oath of the applicant should, in no case, be allowed to prove his residence.

In November, 1804, while the law of 1802 was in force, one Walton applied to the United States circuit court at Alexandria, Virginia, for naturalization. Affidavits were submitted showing that Walton had resided in the United States more than six years; that during that period he was absent a short time on business, but left his family in this country. The application was rejected by the court because the residence did not appear to be a continued residence, and the term of absence was indefinite. *Ex parte Walton*, 1 Cranch C. C. 186, Fed. Cas. No. 17,127.

In December, 1804, in the case of James Saunderson, who

applied to the same court, an affidavit was presented showing that Saunderson came to the United States in October, 1797, and continued to reside here until 1800, when he went to England, returning in April, 1801. In the fall of 1801 he again went to England, and in 1802 returned to this country, where he continued to live to the date of his application. Although he had actually resided in the United States more than five years, the court refused to admit him because he had not continued to reside, according to the requirement of the law. *Ex parte Saunderson*, 1 Cranch C. C. 219, Fed. Cas. No. 12,378.

Up to this time the law had not expressly required a continuous residence. It appears to have been the opinion of the court, however, in the cases just cited, that the law contemplated continuous physical presence in the country. This seems to be an extreme construction.

March 3, 1813, Congress passed "An Act for the Regulation of Seamen on Board the Public and Private Vessels of the United States" [2 Stat. at L. 809, chap. 42, U. S. Comp. Stat. 1901, p. 1333], the 12th section of which provided that "no person who shall arrive in the United States from and after the time when this act shall take effect shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, as aforesaid, have resided within the United States, without being at any time during the said five years out of the territory of the United States."

While it is not unreasonable to suppose that this law was intended to apply to seamen alone, its terms embraced all aliens, and precluded even momentary absence from the territory of the United States, for any purpose whatever, without the forfeiture of the benefits acquired by previous residence. This remained the law until the year 1848. In 1846 an effort was made to re-

peal the last clause of the 12th section, and a bill was introduced in the Senate to accomplish that purpose. It was referred to the judiciary committee, and a favorable report was submitted thereon by Senator Breese. The bill did not become a law at that time, but the following extract from the report referred to is of interest as showing the sentiment of the committee:—"The hardship complained of by this law as it now reads is that persons other than seamen, for whose regulation and naturalization, alone, the law may well be supposed to have been enacted, have, by the courts of the country, adhering to the letter of the law, been deprived of certificates of citizenship, who had made their declaration of intention to become citizens of the United States in conformity with the general naturalization law, whose residence, business pursuits, and property are wholly within the United States; it being shown on final examination that after five years had commenced to run, and during their progress, they had been temporarily out of the territory and beyond the jurisdiction of the United States, sometimes with their own consent, in pursuit of their business, at other times accidentally, in the course of voyages upon the northern lakes, where a divided jurisdiction obtains, the line and limit of which is imaginary only. Cases are stated of persons engaged in large commercial operations, who, with their families, permanently reside in some of our large cities, after making their declarations of their bona fide intention to become citizens, are compelled to visit foreign countries for purposes connected with their business, but immediately returning to their homes in the United States, who are unable, by reason of this temporary absence, to show upon the final examination that they have been continually during the five years within our territory, and are thus refused their certificates of naturalization. . . . All such persons could conscientiously depose that they have, at no time within the five

years, been out of the territory of the United States with the intention of remaining out; that the *animus revertendi* always continued. The committee think that the rigor of the law, if originally intended to apply to such persons, and not to seamen only, might with propriety be relaxed, leaving it to the courts to determine upon each application for a certificate of naturalization, if the residence set up has been bona fide, with the intention of remaining, only interrupted by such and kindred circumstances to which the committee have referred. To accomplish this, enough of the section will remain after the clause in question is repealed; for a momentary absence, to be judged of by all the circumstances attending it, may not be found inconsistent with a correct legal idea of a continued residence as required."

Two years later the matter again came up in Congress, and June 26, 1848, an act (9 Stat. at L. 240, chap. 72) was passed striking from the law the clause in question, *viz.*, "without being at any time during the said five years out of the territory of the United States." The natural inference from this action of Congress would seem to be that it intended to relieve the applicant for naturalization from the forfeiture caused by necessary temporary absence, unaccompanied by change of intention. But a perusal of the record of the debate in Congress at the time of the repeal of the clause does not fully confirm this view. Mr. Dickinson, having the bill in charge in the Senate, stated its object to be "to enable those individuals who had not been able to perfect their letters of naturalization, in consequence of being compelled to be absent from the United States since the notification of their intention, to obtain relief." Cong. Globe, 1st Session, 30th Congress, p. 854.

"Mr. Underwood asked whether the bill proposed that the time an individual might be absent from the United States was to be made up by subsequent residence, prior to the granting of the

certificate. Mr. Dickinson replied in the affirmative. Mr. Breese said that, if the applicant for naturalization should be called out of the United States, and remain abroad four years and eleven months, that time would not be counted. Mr. Berrien explained the law as it would stand after the passage of the bill, which required that the five years' residence should be completed. If the applicant for a certificate were absent any part of that time, it would remain for the court to decide whether that absence was sufficient to prevent the issuing of the certificate. As the law now stands, if any person, after notifying his intention to become a citizen, sets his foot out of the United States, he must go through the full term of five years' residence again. Under this bill, he may be called away for a short period by business, but, having filed his desire to become naturalized, the court may decide that there is no sufficient reason for his going again over the whole term of probation. The bill was then considered, and read a third time, and passed." *Ibid.*

In the House, Mr. Birdsall, in explaining the object of the bill, stated that persons who had left the United States as volunteers for Mexico, after declaring their intention to become naturalized, had been thus prevented from obtaining the residence required by law. "Mr. McClernand said that those who had enlisted in the service of their country, and had been sent beyond its limits in the prosecution of the war, fell within the wording of the present law, and were forced to lose all the time they were thus absent, though they had previously notified their intention of being naturalized. The bill was then passed." *Id.* p. 864.

So far as it can be gathered from the foregoing, the intention of Congress in repealing the clause in question seems to have been to conserve to the applicant for naturalization, who, in good faith, temporarily absents himself from the United States after declaring his intention, only the benefit of the time which he has actually spent in this country.

But it is not believed that this apparent intention would justify the courts in disregarding what seems to be the plain and reasonable meaning of the language of the law. The great injustice of such a construction is well shown by the statement of Mr. McClernand, quoted above, that persons who had volunteered in the service of the United States, and been sent beyond its limits in prosecution of war against a foreign nation, would be "forced to lose all the time they were thus absent, though they had previously notified their intention of being naturalized."

Moreover, if the residence is interrupted by temporary absence, without change of intention on the part of the applicant, the logical consequence would be that he should be required, not merely to make up the time thus lost, but to begin *de novo*. For a residence which is once broken cannot be said to be a continued residence, such as the law requires.

The just rule, it is apprehended, is that suggested by Senator Berrien, *supra*: "If the applicant is absent any part of the time, it remains for the court to decide whether that absence is sufficient to prevent the issuing of the certificate." In other words, if the facts and circumstances of the absence, as shown in the particular case, indicate no change of intention on the part of the applicant, it is the duty of the court to issue the certificate, without requiring such time to be made up. If there is evidence showing abandonment of intention, the application should be refused, and the party should be required to begin *de novo*. This is believed to be the only construction consistent with the spirit of the law and with the plain import of the language employed.

It is interesting, in this connection, to note the construction given very similar language used in naturalization treaties. Our treaties of naturalization with Bavaria (15 Stat. at L. 661), and Württemberg (16 Stat. at L. 735), concluded in 1868, require that citizens of the one country shall have "resided

uninterruptedly" within the territory of the other for five years. This language is certainly as strong as "continued residence" in our naturalization law. Rev. Stat. § 2170 (U. S. Comp. Stat. 1901, p. 1333). Yet in the protocol of each of these treaties, more exactly defining and explaining the contents of the treaties, it is declared: "The words 'resided uninterruptedly' are obviously to be understood, not of a continued bodily presence, but in the legal sense, and therefore a transient absence, a journey, or the like, by no means interrupts the period of five years contemplated by the 1st article." 15 Stat. at L. 664. See also For. Rel. 1901, p. 520.

30. Prerequisites to final admission to citizenship; in general.—Application to be admitted to citizenship may be made to any of the courts before which the preliminary declaration of intent may be made. Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329). It need not be made to the same court.

Naturalization is a judicial act, which must be performed by the court. *Green v. Salas*, 31 Fed. 106; note on *Naturalization of Aliens; jurisdiction of state courts, Re Dean* (Me.) 13 L. R. A. 229.

Although certain judicial powers are conferred on the minister of the United States to Turkey, he cannot naturalize aliens. Mr. Gresham to Mr. Terrell, November 2, 1893, For. Rel. 1893, p. 701. See also Instruction to Consul General at Shanghai, November 11, 1897.

An alien who has been living at the United States legation in Turkey, as its interpreter, for twenty years, cannot be considered as having been constructively in the United States during that time. The fiction of extraterritoriality cannot be carried to that extent. Mr. Gresham to Mr. Terrell, *supra*. No one can be lawfully naturalized outside of American jurisdiction.

The alien must prove that he has made the preliminary decla-

ration required. This is ordinarily done by the production of a certificate of record of the court. *Re Bodek*, 63 Fed. 815.

In addition to proof of residence in the United States for the continued term of five years, it must be made to appear to the satisfaction of the court that the applicant has resided one year at least within the territory or state where the court to which he applies is held. Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329).

Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329), providing that the court naturalizing an alien must be satisfied that he has resided in the United States for five years, and within the state where the court is held for one year, does not require the last year of residence before the application for naturalization to be in the state where the application is made, as it is sufficient that applicant has lived for any one year in that state. *Chandler v. Wartman*, 6 N. J. L. J. 301.

The residence of the applicant cannot be proved by his own oath, the statute providing that "the oath of the applicant shall in no case be allowed to prove his residence." This amounts to a prohibition against taking the oath of the applicant as proof of his residence, and does not merely render his oath insufficient. Such an oath, if taken, is extrajudicial. *United States v. Grottkau*, 30 Fed. 672.

The practice is for the courts to require the testimony, under oath, of at least two citizens of the United States of good standing, who must be able to testify of their own knowledge that the applicant has been a resident of the United States for five years at least, and within the state or territory wherein the court is held for one year.

In proceedings instituted for naturalization, an alien's residence cannot be established by affidavit, but must be proved in court by the testimony of witnesses. *Re An Alien*, 7 Hill (N. Y.) 137.

An alien cannot vouch for a person petitioning for naturalization. *Com. v. Paper*, 1 Brewst. (Pa.) 263.

The law requires that some of the essential facts shall be made to appear to the satisfaction of the court by evidence other than the testimony of the applicant himself, and, to meet this requirement, a witness is usually produced, commonly called a "voucher." In the case of *Re Lipshitz*, 97 Fed. 584, where it appeared that the "voucher" presenting himself had been in the habit of appearing in the same capacity in such cases, and of making a charge for appearing and giving his testimony, the court held that "an applicant for naturalization should produce a voucher other than one who habitually, and for compensation, appears as such."

31. — Moral character of applicant for final admission.—

The applicant must prove that during the five years of his probation he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329).

An alien who has been guilty of murder, robbery, theft, bribery, or perjury is barred from admission to citizenship. *Re Spenser*, 5 Sawy. 195, Fed. Cas. No. 13,234.

An alien who lives in a state of polygamy, or believes that polygamy may be rightfully practised in defiance of the laws to the contrary, is not entitled to citizenship. *Ex parte Douglas*, and *Ex parte Sandberg*, 5 West. Jur. 171.

Habitual gaming or selling of liquors, when forbidden by statute, would be a bar to admission. *Re Spenser*, 5 Sawy. 195, Fed. Cas. No. 13,234.

Whatever is forbidden by the law of the land ought to be considered, for the time being, immoral, within the purview of this statute. A person who violates the law manifests, in a greater

or less degree, that he is not "well disposed to the good order and happiness" of the country. *Ibid.*

An alien convicted of perjury while residing here, though pardoned, is not "of good moral character," entitled to admission to citizenship. *Re Spenser*, 5 Sawy. 195, Fed. Cas. No. 13,234.

An alien who has behaved as a man of good moral character during the five years immediately preceding his application, but who had not so behaved during his residence in the United States prior thereto, is not entitled to admission. *Ibid.*

32. — Anarchists.—No person who disbelieves in, or who is opposed to, all organized government; or who is a member of, or affiliated with, any organization entertaining and teaching such disbelief in or opposition to all organized government; or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States or of any other organized government, because of his or their official character,—shall be naturalized or made a citizen of the United States. Act of March 3, 1903 (32 Stat. at L. 1222, chap. 1012, § 39).

33. Oath.—The applicant must declare, on oath, that he will support the Constitution of the United States, and that he renounces all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; particularly by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject. Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329).

34. Knowledge of Constitution.—The applicant for admission to citizenship must be acquainted with the provisions of the Federal Constitution and in sympathy with its principles, otherwise he cannot intelligently and truthfully declare that he will support it. Evans, American Citizenship, 27.

Where it appears, upon examination, that an applicant for naturalization is without such knowledge of the Constitution as is essential to the rational assumption of an undertaking avouched by oath to support it, his oath to support the Constitution should not be accepted; nor should the court admit an alien to citizenship without being satisfied that he has at least some general comprehension of what the Constitution is, and of the principles which it affirms. *Re Bodek*, 63 Fed. 815.

One who cannot read or write English, but has read the Constitution in a foreign language, and knows that the United States has a President, but cannot mention his name, does not understand the principles of the government of the United States or its institutions sufficiently to become a citizen. *Re Kanaka Nian*, 6 Utah, 259, 4 L. R. A. 726, 21 Pac. 493.

But in the case of *Re Rodriguez*, 81 Fed. 337, the United States circuit court held that an alien who was ignorant and unable to read and write, and who could not explain the principles of the Constitution, was entitled to be naturalized, where it was shown that he was peaceable, industrious, of a good moral character, and law-abiding.

35. Renunciation of hereditary titles.—The applicant must renounce any hereditary title or order of nobility which he may have. Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329).

36. Recording of papers.—The declarations, renunciations, etc., required of the alien, shall be recorded in the court. Rev. Stat. § 2165 (U. S. Comp. Stat. 1901, p. 1329).

37. Admission of soldiers to citizenship.—Section 2166, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1331), provides that “any alien of the age of twenty-one years and upward, who has enlisted or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be here-

after, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States."

38. Admission of persons serving in Navy and Marine Corps to citizenship.—By the act of July 26, 1894 (28 Stat. at L. 124, chap. 165, U. S. Comp. Stat. 1901, p. 1331), the same privilege was extended to persons who have served five years in the Navy or one enlistment in the Marine Corps, and have been honorably discharged therefrom. The statute provides that "any alien of the age of twenty-one years and upward, who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy, or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in, and honorable discharge from, the United States Navy or Marine Corps."

39. Necessity for formal admission of soldiers, sailors, and marines to citizenship.—It is erroneously supposed by some that the mere facts of service and discharge operate to naturalize the party, whereas they are only part of the evidence on which nat-

uralization may be granted. The alien soldier, sailor, or marine can only avail himself of the privileges of the above laws by personal application to one of the courts mentioned in § 2165 (U. S. Comp. Stat. 1901, p. 1329), and upon the declaration and proof required by law.

A mere residence in the country as a soldier does not make one a citizen. *People ex rel. Orman v. Riley*, 15 Cal. 48.

40. Admission of persons coming to the United States at the age of eighteen years or under, to citizenship.— As already observed (*supra*, § 23), aliens who come to the United States at the age of eighteen or under may be admitted to citizenship after a residence of five years in this country without having made the preliminary declaration of intention. This is by virtue of the provisions of Rev. Stat. § 2167 (U. S. Comp. Stat. 1901, p. 1332): “Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of § 2165 [U. S. Comp. Stat. 1901, p. 1329]; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his bona fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.”

The language of this section is somewhat ambiguous, but the evident intention was to enable an alien who comes to the United

States at the age of eighteen or under to avail himself, in applying for admission to citizenship after he has reached majority, of the time which he has resided here during minority. A minor is not deemed competent to make the declaration of intention required by § 2165. This statute waives the preliminary declaration, but requires the alien to declare on oath, and prove at the time of his admission, that for the preceding two years it has been his intention to become a citizen. See *Re Bodek*, 63 Fed. 814.

He must have resided in the United States for the full statutory period of five years, however.

“The object of this provision is to enable a person who has resided in the United States five years, but who, from the fact of being a minor, has not been competent to make a declaration, to make his declaration at the expiration of such five years, and be at once naturalized, provided that, at the time of his naturalization, he is of full age.” 2 Wharton, International Law Dig. p. 342.

The phrase in the statute, “declaration required therein at the time of his admission,” refers to the declaration required by the second condition of § 2165 (U. S. Comp. Stat. 1901, p. 1329),—that is, the declaration of the alien that he will support the Constitution, and that he renounces all foreign allegiance. *United States v. Walsh*, 22 Fed. 644.

This declaration must be under oath. *Ibid.*

It is not necessary that two of the five years required by this section in the case of a minor alien should occur after he has reached the age of twenty-one. *Schutz's Petition*, 64 N. H. 241.

The alien may come to the United States at the age of sixteen, and be admitted to naturalization when he is twenty-one. If he

is over eighteen years old when he arrives in the United States he cannot be naturalized under this section, which applies only to aliens who have resided here at least three years next preceding their arriving at majority. If an alien comes to the United States at the age of nineteen, as he is not required by the general naturalization laws to make his preliminary declaration of intention until two years before his application for admission, his minority will not interfere. He may make such declaration when he is twenty-two years old and be finally admitted when he is twenty-four.

The declaration which an applicant for naturalization makes, under Rev. Stat. § 2167 (U. S. Comp. Stat. 1901, p. 1332), at the time of his admission, must be supported by proof satisfactory to the court that it has been his bona fide intention for two years next preceding to become a citizen; and the vague oral statement of a single witness is not sufficient. *Re Fronascone*, 99Fed. 48.

41. Admission of widow and minor children of deceased declarant to citizenship.—Section 2168, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1332), reads as follows: “When any alien, who has complied with the first condition specified in § 2165, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.”

It is to be observed that the declaration of intention and death of the declarant do not, of themselves, confer citizenship upon the widow and minor children. There is a further requisite. Before they are entitled to the rights of citizenship they must go before a competent court and take the oaths prescribed by law to be taken by an alien upon his admission to citizenship. Mr. Olney to Chaney & Garrison, February 6, 1897, MSS. Dom. Let.

42. Admission of merchant seamen to citizenship.— As has been stated heretofore (*supra*, § 25), under § 2174, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1334), a seaman being a foreigner, after declaring his intention of becoming a citizen, and serving three years on board of a merchant vessel of the United States, may be admitted to citizenship. He is required to make application to a competent court, and to produce a certificate of his declaration of intention, and his certificate of discharge and good conduct during his service on such vessel.

For the purpose of manning and serving on board any merchant vessel of the United States, he is to be deemed a citizen of the United States after making his declaration of intention, and after he shall have served such three years; and for all purposes of protection as an American citizen, he shall be deemed such after filing his declaration of intention.

While serving on board a merchant vessel of the United States, the seaman is deemed to be constructively within the United States.

43. Status of minor children of declarant who fails to perfect his naturalization.— What is the status of minor children of aliens who declare their intention to become citizens, but do not perfect their naturalization? Suppose an alien emigrates to the United States, bringing minor children with him, and in due time declares his intention to become a citizen, but fails to take out his final papers, what is the status of the children when they reach majority?

President Arthur in his annual message in 1884, referred to this question, and recommended that Congress should “clearly define the status of minor children of fathers who have declared their intention to become citizens, but have failed to perfect their naturalization.”

The question was presented to the United States Supreme Court in the case of *Boyd v. Nebraska*, 143 U. S. 178, 36 L. ed. 115, 12 Sup. Ct. Rep. 375. Boyd was born in Ireland in 1834, of Irish parents, and brought to this country in 1844 by his father, who settled in Ohio, and, in 1849, declared his intention to become a citizen of the United States. There is no record or other written evidence that he ever completed his naturalization by taking out his naturalization certificate after the expiration of five years. For many years after the expiration of that period, however, he exercised rights and claimed privileges in Ohio, which could only be claimed and exercised by citizens of the United States and of the state. In 1855 the son voted in Ohio as a citizen, under the belief that his father had taken out his final naturalization papers. In 1856 he removed to Nebraska. In 1857 he was elected and served as county clerk of Douglass county; in 1864 he was sworn into the military service, and served as a soldier of the Federal government to defend the frontier from an attack of Indians; in 1866 he was elected a member of the Nebraska legislature and served one session; in 1871 he was elected a member of the convention to frame a state constitution, and served as such; in 1875 he was again elected and served as a member of the convention which framed the present state Constitution; in 1880 he was elected and acted as president of the city council of Omaha; and in 1881 and 1885, respectively, was elected mayor of that city, serving in all four years. From 1856 until Nebraska was admitted as a state, he voted at all elections, territorial, state, municipal, and national. He took the oath required by law in entering upon the duties of the offices he filled, and swore that he would support the Constitution of the United States. In 1888, after thirty years of unquestioned exercise of the rights, privileges, and immunities of

a citizen of the United States and of the territory and state, he was elected governor of the state. He took the oath of office and entered upon the discharge of its duties. His predecessor, Thayer, as relator, filed an information in the supreme court of Nebraska, setting forth the facts as to the declaration of intention by Boyd's father, averring that the father did not become a citizen during the son's minority, and claiming that Boyd, the son, never having himself been naturalized, was not, at the time of his election, a citizen of the United States, and was not, under the Constitution and laws of Nebraska, eligible to the office of governor of the state. The relator prayed judgment that Boyd be ousted from that office, and that the relator be declared entitled to it until a successor could be elected. The state court having decided in favor of Thayer, a writ of error was sued out to the Supreme Court of the United States. The court, in discussing the question of the status of minor children of persons who have declared their intention to become citizens, said: "Clearly, minors acquire an inchoate status by the declaration of intention on the part of their parents. If they attain their majority before the parent completes his naturalization, then they have an election to repudiate the status which they find impressed upon them, and determine that they will accept allegiance to some foreign potentate or power rather than hold fast to the citizenship which the act of the parent has initiated for them. Ordinarily this election is determined by application on their own behalf, but it does not follow that an actual equivalent may not be accepted in lieu of a technical compliance."

Under the law of the territory of Nebraska, citizens of the United States, and those who had filed their declaration of intention to become such, were citizens of the territory. The court said that Congress so regarded them, and, in § 3. of the enabling

act (13 Stat. at L. 47), referred to them as citizens. The court declared that all those who were citizens of the original states became, upon the formation of the Union, citizens of the United States, and that upon the admission of Nebraska into the Union "upon an equal footing with the original states, in all respects whatsoever," the citizens of what had been the territory became citizens of the United States and of the state. The court concluded: "We are of opinion that James E. Boyd is entitled to claim that, if his father did not complete his naturalization before his son had attained majority, the son cannot be held to have lost the inchoate status he had acquired by the declaration of intention, and to have elected to become the subject of a foreign power, but, on the contrary, that the oaths he took and his action as a citizen entitled him to insist upon the benefit of his father's act, and placed him in the same category as his father would have occupied if he had emigrated to the territory of Nebraska; that, in short, he was within the intent and meaning, effect and operation of the acts of Congress in relation to citizens of the territory, and was made a citizen of the United States and of the state of Nebraska under the organic and enabling acts and the act of admission." *Ibid.*

In the somewhat similar case of *Trabing v. United States*, 32 Ct. Cl. 440, the court said that the status which a minor acquires by the declaration of intention of his parents is only an inchoate status. "If he attains his majority," said the court, "before his father completes his naturalization, he has an election to repudiate the status and determine whether he will render allegiance to the United States or to the foreign potentate or power of the country where he was born." In that case there was nothing to evidence the election of American citizenship by the claimant upon attaining his majority. He did not vote, but remained in his status until the year 1892 (when he was fifty

years of age), when he applied for naturalization and obtained a decree. "If he had voted and held office [said the court], and performed all the duties of citizenship in the active and unequivocal manner of the respondent in *Boyd v. Nebraska*, there would be good reason to say, as his counsel says, that obtaining naturalization in 1892 was for the purpose of obtaining some precise evidence of naturalization so that his status as a citizen could not be questioned. But, taken with the negative facts of this case,—the facts that he was not born a citizen of the United States, that his father was not a citizen of the United States, that his father is not shown to have become a citizen of the United States, that the claimant owed no natural allegiance to the United States, and that he apparently chose to remain a subject of a foreign power after attaining his majority,—it must be held that this application for naturalization was the first manifestation of an intent to become a citizen, and that it negatives the presumption of an earlier election."

44. Effect of judgment of naturalization.—In *Spratt v. Spratt*, 4 Pet. 393, 7 L. ed. 897, Chief Justice Marshall said: "The various acts upon the subject [of naturalization] submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity."

In *Campbell v. Gordon*, 6 Cranch, 176, 3 L. ed. 190, Washington, J., said: "But, if the oath be administered, and nothing appears to the contrary, it must be presumed that the court before whom the oath was taken was satisfied as to the character of the applicant. The oath, when taken, confers upon him the rights of a citizen, and amounts to a judgment of the court for his admission to those rights."

And in *Stark v. Chesapeake Ins. Co.* 7 Cranch, 420, 3 L. ed. 391, the Supreme Court held that it need not appear by the record of naturalization that all the requisites required by law for the admission of aliens to citizenship have been complied with.* The judgment of the court admitting the alien to citizenship is conclusive that all the prerequisites have been complied with. Parol proof may be received in and of the record. In this case it did not appear from the record that the plaintiff had made the preliminary declaration of intention required by law.

In *Ex parte Cregg*, 2 Curt. C. C. 98, Fed. Cas. No. 3,380, Mr. Justice Curtis said: The importance and value of this privilege of citizenship, which is conclusively and finally bestowed by the act of the court having jurisdiction, "should prevent us from allowing less than its full weight to any requirement by Congress which tends to restrict this power to those tribunals which may be supposed most competent to exercise it. And certainly, there would seem to be no propriety in intrusting to a court which, in the exercise of its common-law jurisdiction, cannot pass finally on any matter of law or fact, affecting property to the amount of one dollar, to make a final decision upon all questions of law or fact involved in an application for this great right, so as to make an absolute and unimpeachable grant of it."

45. **Setting aside naturalization.**—"A private individual has no standing in court to institute a proceeding to set aside an order admitting an alien to citizenship." *Re McCurran* (N. Y.) 23 L. R. A. 835.

Where a decree of naturalization has been fraudulently obtained in a state court, the United States can sue for its cancellation in the Federal courts. *United States v. Norsch*, 42 Fed. 417.

*See, however, Sec. 39, act of March 3, 1903, post. —.

Though the decree or order of naturalization cannot be impeached collaterally (*State ex rel. Brown v. Macdonald*, 24 Minn. 48), it may, if fraudulent, be repudiated by the government. 2 Wharton, International Law Dig. § 174a.

In *United States v. Gleason*, 78 Fed. 396, it was decided that the administration of the oaths and issuing of a certificate of naturalization, by a competent court, showing the satisfaction of the court that the statutory requirements had been complied with, constituted a judgment of admission to citizenship, with the force of such a judgment upon the status of the applicant. The court declined to cancel the certificate upon the ground that it had been obtained by false representations. In referring to the case of *United States v. Norsch*, 42 Fed. 417, the court said: "Thayer, J., in *United States v. Norsch*, 42 Fed. 417, . . . seems to treat the liability of a judgment of naturalization to be set aside for fraud like a patent as conceded, and to have considered only the power of courts of the United States to set aside such judgments of state courts, and to intimate that the relief would be accomplished by setting aside the certificate, or by injunction against exercising the right. Such would seem to be the only modes of relief, if any could be granted, for technically no court not authorized by law to review a judgment could directly set it aside. *Barrow v. Hunton*, 99 U. S. 80, 25 L. ed. 407. And a court of equity can affect a judgment only by decree to prevent carrying it out or enforcing it. 2 Story, Eq. § 885. The surrender of the certificate, which is only evidence of the judgment, would not affect the citizenship established by the judgment; and an injunction which could only run against further exercise of the rights of citizenship would not affect past acts."

The court said that an attempt to carry out such a decree against the defendant would produce great confusion and mis-

chief. "The defendant became," said the court, "a citizen of the state of New York, as well as of the United States. Other citizens became entitled to vote for him for such offices as citizens could hold, as well as he became entitled to vote, hold office, hold lands, or do what else citizens can do. Neither the state, nor any citizen of New York or of the United States, is a party to this suit; nor do they hold their right to vote for him, or to have him hold office, under him, and no decree against him here could affect their right." *Ibid.*

And in *Pintsch Compressing Co. v. Bergin*, 84 Fed. 140, where a woman had been admitted to citizenship, and there was no irregularity or defect apparent on the face of the record, the court refused the petition of a private party to cancel the decree at a subsequent term on the ground that for the greater part of the two years immediately preceding her admission she had been under the disability of marriage. The court held that this proposition involved mixed questions of law and fact, which were presumably passed on by the court before it admitted her to citizenship. The view was expressed that only the United States, or some person acting by their authorization, can institute proceedings to set aside a judgment of naturalization.

But in *United States v. Kornmehl*, 89 Fed. 10, where it was made to appear to the court that the court issuing a naturalization certificate had been deceived by material false statements of the applicant as to his age and length of residence in this country, the court directed that the letters of naturalization be revoked as having been improvidently issued. The proceedings in this case were instituted by the immigration commissioners, in behalf of the United States.

In *Re Yamashita* (Wash.) 59 L. R. A. 671, 70 Pac. 482, where a naturalized Japanese was denied admission as an attorney at law, on the ground that he was not a citizen of the United

States, the court held that the judgment admitting him to citizenship could be collaterally attacked, for the reason that it showed on its face that Yamashita was of the Japanese race, and not entitled to citizenship.

46. Right of foreign governments to impeach American certificate of naturalization denied.—The Department of State declines to recognize the validity of a certificate of naturalization when it appears that it was obtained by fraud or granted by mistake. But this government denies the right of a foreign government to impeach a certificate of naturalization issued by an American court. American Passport, p. 156.

It has been uniformly held by the Department of State that while, on the application of a foreign government, it will cause inquiries to be made as to whether a judgment of naturalization was improvidently granted, and while it will never permit itself to grant protection based upon a naturalization decree which is shown to it to be fraudulent, it will not recognize a foreign government's right to impeach such decrees. When set up by it as the basis of its action towards a foreign state, it cannot recognize the right of any foreign executive or court to determine as to their validity. That determination must be made, so far as concerns foreign governments, exclusively by itself. Mr. Bayard to Mr. McLane, February 15, 1888, For. Rel. 1888, pt. 1, p. 511.

It was held by Secretary Blaine that a certificate of naturalization as a citizen of the United States cannot be impeached for fraud before an international commission. Mr. Blaine to Mr. Durant, August 22, 1881, MSS. Dom. Let.

But international claims commissions have frequently impeached certificates of naturalization. See Moore, International Arbitration, 2583 *et seq.*

The validity of a judgment of naturalization is not impaired

by an inaccurate statement in the recitals respecting the residence in the United States of the applicant. The recitals constitute no part of the judgment. Where, on an application for renaturalization, it appeared that the applicant, who had been admitted to citizenship upon his statement which he then believed to be true, but which he subsequently became satisfied was incorrect, to the effect that he had resided in the United States for three years preceding his arrival at the age of twenty-one years, the court said: "Undoubtedly, the court might, in a proper case, set aside its judgment admitting a party to citizenship if the party was not at the time entitled to admission and the court had reason to believe that it had been intentionally deceived. But in this case there is no ground to suppose any deception was intended, or for any imputation upon the motives of the applicant. He was at the time entitled to be admitted as a citizen on other grounds. He had declared his intention to become a citizen in one of the courts of record in the city of New York seven years before, and had resided in the United States for five years. This latter fact was established at the time before the district court, and is stated in the record. Upon these facts and the other matters as to character and attachment to the principles of the Constitution, proved by the witnesses present, he could have been as readily admitted as upon the grounds stated." The court held that renaturalization was not necessary. *Re McCoppin*, 5 Sawy. 630, Fed. Cas. No. 8,713.

CHAPTER II.

NATURALIZATION BY NATURALIZATION OF PARENT.

47. In general.

48. Mode of parents' naturalization immaterial.

47. In general.— The naturalization of an alien also confers citizenship upon his minor children dwelling in the United States.

Section 2172, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1334), provides that "the children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof."

The use of the qualifying phrase, "if dwelling in the United States," makes the meaning of this law somewhat uncertain. Does the law mean that minors become citizens if they are residing in the United States at the time their parents are naturalized? or does it mean that they are to be considered as citizens only while they are residing in the United States?

The naturalization of an alien naturalizes his minor children born abroad but residing in the United States at the time of his naturalization.

Children born abroad of aliens who subsequently emigrated to this country with their families, and were naturalized during the minority of their children, are citizens of the United States.

10 Ops. Atty. Gen. 329; *State ex rel. Carey v. Andriano*, 92 Mo. 70, 4 S. W. 263; *Gumm v. Hubbard*, 97 Mo. 311, 10 Am. St. Rep. 312, 11 S. W. 61.

This statute applies also to children who come to the United States after the father's naturalization, but before they reach majority.

In the case of Henry Huber and family and Frederick Huber and family, who, in 1881, applied to our legation in Vienna for passports, the facts were as follows: Henry Huber was born in Switzerland in 1823, married there in 1846, and had five children born in that country. He came to the United States with his family in 1854, was naturalized in 1859, and returned with his family to Europe in 1860. His eldest son, Heinrich, returned to this country in 1864, and continued to reside here. His son Frederick married an Austrian subject in Austria in 1876. The latter stated that he intended, "in course of time," "to return to America." Minister Kasson granted a passport to Henry Huber, accompanied by his wife and minor children, and to Frederick Huber, accompanied by his wife and infant child. In reporting the matter to the Department, he said: "My difficulty in arriving at a satisfactory decision in these cases arises from the language of our statute. . . . "Section 2172 [U. S. Comp. Stat. 1901, p. 1334] intends minors living with their parents at the time of naturalization, but employs as to these the dubious expression 'shall, if dwelling in the United States, be considered as citizens thereof.' Does that mean that our laws make them citizens by virtue of the father's naturalization while they are minors living with him? or does it mean that the law considers them to be citizens only during their residence in the United States, and withholds protection from them outside of the domestic jurisdiction? or that they are not to be considered our citizens at all, anywhere be-

yond their minority? Are they thrown back, on arriving in Europe, upon their born allegiance?" Secretary Blaine approved Mr. Kasson's action, and said in reply: "This Department has always held the provisions of § 2172, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1334), as applicable to such children as were actually residing in the United States at the time of their fathers' naturalization, and to minor children who came to the United States during their minority and while the parents were residing here in the character of citizens. This view appears to be in consonance with the traditional policy of the government on the subject of citizenship." Mr. Blaine to Mr. Kasson, March 31, 1881, For. Rel. 1881, p. 53.

In a despatch dated October 13, 1884, Mr. Kasson inquired: "Does the phrase, 'if dwelling in the United States'—(Rev. Stat. § 2172 [U. S. Comp. Stat. 1901, p. 1334])—refer to the date of naturalization, or to the duration of residence within the United States, and excluding any foreign residence? In other words, which of these readings is correct: 'Sec. 2172 [U. S. Comp. Stat. 1901, p. 1334]. The children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of the naturalization of their parents, shall, if [at the time] dwelling in the United States [or while dwelling in the United States] be considered as citizens thereof?' The former construction would allow a young man to join his father in the United States a week before his naturalization, and return to his native land a week after, a full-fledged American citizen, while still in his minority, and without renunciation of old allegiance or swearing to the new." For. Rel. 1884, p. 202.

In reply, Secretary Frelinghuysen stated that Mr. Kasson's query was hypothetical, and that no such case had, so far as he knew, been presented for the decision of the Executive or the

courts of the United States. He said, however, that in the light of Rev. Stat. § 1999 (U. S. Comp. Stat. 1901, p. 1269), declaring any decision of any officer of the government tending to restrict the right of expatriation to be inconsistent with the fundamental principles of the Republic, and of § 2000 (U. S. Comp. Stat. 1901, p. 1270), declaring that all naturalized citizens of the United States while in foreign countries are entitled to receive from this government the same protection which is accorded to native-born citizens, it was difficult to see how any branch of the government could well maintain that the children of persons duly naturalized in the United States, and therefore also citizens by law, should lose that status by the mere act of passing beyond the territorial jurisdiction of the United States, especially if they passed within the limits of a third state not of the original allegiance, which could under no circumstances lay claim to their subjection. "It can be seen," said he, "how such an interpretation might regard a citizen of the United States as a citizen of no country whatever, through the sole fact of setting foot outside of our territory, and how, by again setting foot within our borders, his right of citizenship might be deemed to revive unimpaired."

Referring to Mr. Kasson's remark that the construction of the phrase as meaning that the minor children who become citizens through the naturalization of the father must be, at the time of the father's naturalization, dwelling in the United States, would allow a young man to join his father in the United States a week before his naturalization, and return to his native land a week after, a full-fledged American citizen, Secretary Frelinghuysen said: "That such a thing is possible is a defect in our existing naturalization laws." For. Rel. 1885, pp. 395, 396.

Jacob Lenzen, Jr., was born in Germany in 1881, and in

1882 was taken by his father to the United States, where he lived until August, 1898, when he went to Germany with the intention of remaining two or three years. His father was naturalized September 13, 1898,—after young Lenzen had left the United States. Lenzen applied for a passport, to the United States embassy at Berlin. Upon the request of the embassy for instructions, Secretary Hay said: "The words 'dwelling in the United States' (in Rev. Stat. § 2172 [U. S. Comp. Stat. 1901, p. 1334]) have been held by the Department to mean either at the time of the father's naturalization or afterwards during the child's minority."

After quoting Mr. Blaine's instruction to Mr. Kasson, *supra*, he added: "Taking this view, young Lenzen, who was not dwelling in the United States at the time of his father's naturalization, and has not dwelt here since, is not a citizen of the United States. Should he come to the United States and dwell here during his minority he would, however, be entitled to claim citizenship under the statute." Mr. Hay to Mr. White, October 15, 1898, MSS. Inst. to Germany; Id. August 18, 1898.

It is sufficient, therefore, it seems, if the children are "dwelling in the United States" at the time of the naturalization of their parents, or at any subsequent period during their minority.

The naturalization of an alien, after his son, born out of the United States, has become of age, does not make the latter a citizen. *Boyd v. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375.

Naturalization of the parent in the United States does not confer citizenship on his minor children born abroad before that event, and continuing to reside and attain their majority abroad. Mr. Foster to Mr. Lincoln, August 10, 1892, MSS. Inst. to Gt. Brit. For. Rel. 1892, p. 233. See also Mr. Frelinghuysen to Mr. Brulatour, July 30, 1883, For. Rel. 1883, p. 274.

If the children remain abroad until they reach majority, they cannot acquire citizenship through their parents' naturalization. In the case of Frank Fred Nicklas, the father emigrated to the United States from Germany in 1869, and was naturalized here in 1884. In 1885 he sent for his son, aged seventeen, to join him in this country. The son was arrested just before he started, was confined in jail for a couple of weeks, and was then brought before a court of justice and discharged. The father requested the intervention of this government in the son's behalf. Secretary Bayard said: "If, as is understood from your statement, the son, Frank Fred Nicklas, did not emigrate with his father to America, was not residing in America when his father was naturalized here in 1884, and has not at any time since been a resident of the United States, he cannot be considered a United States citizen. Our laws require that the children of persons who have been naturalized here must be 'dwelling in the United States' to be considered citizens thereof." Mr. Bayard to Mr. Cole, November 9, 1885, MSS. Dom. Let.

And upon the application of Mr. Charles Drevet for a passport, it appeared that he was born, in 1864, in Paris, where he had always resided. His father, a Frenchman, came to the United States in 1852; in 1858 he declared his intention to become an American citizen; in 1859 he married an American lady; in 1860 he went back to France; in 1869 he returned to America; in the same year he took out his second papers, and shortly after resumed his residence in France, where he continued to live. The son had always lived in France; the father had been domiciled there for many years; neither the son nor the father had expressed any intention of residing in the United States at any time in the future. The Department held that, under Rev. Stat. § 2172 (U. S. Comp. Stat. 1901, p. 1334), as Charles Drevet was not, at the time of the naturalization of

his father, dwelling in the United States; as he had never resided in this country, and never intended to do so,—he could not be considered an American citizen. Mr. Bayard to Mr. McLane, July 2, 1885, MSS. Inst. to France, For. Rel. 1885, p. 373; 2 Wharton, International Law Dig. p. 410.

Section 2172, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1334), only confers citizenship upon minors dwelling in the United States; and the Department holds that the prescribed minority residence in this country must have coincided with, or been subsequent to, the parent's admission to citizenship. Mr. Hay to Mr. Harris, April 1, 1899, MSS. Inst. to Austria.

Anton Macek was born in Vienna of Austrian parents August 13, 1875. In May, 1884, his father emigrated to the United States with his entire family and had resided in Chicago ever since. Before his naturalization and while the son Anton was yet a minor, August 16, 1894, his father sent him to Austria to be educated. The father was naturalized in Chicago October 22, 1894,—that is, subsequent to the return of the son Anton to Austria, where he had since remained. Upon application for a passport it was held that Anton Macek was not entitled to claim citizenship in the United States for the reason that "he was not dwelling in the United States at the time of his father's naturalization, he has not at any time since dwelt in the United States, and of course is not now dwelling here."

In this case the view was advanced that the words of the statute, "dwelling in the United States," refer to the legal residence of a minor; that, although at the time of the naturalization of the father Anton Macek was not actually within the jurisdiction of the United States, his legal residence was with the parent, and that he might be held to have been vicariously present in the person of his father, through whom he became a citizen of the United States, the same as though he had been

personally present at the father's home in Chicago. The Department said that "the principle may be broadly stated that no country can naturalize an inhabitant of another country while that person is dwelling within the jurisdiction of the other country." Mr. Hay to Mr. Harris, January 22, 1900, For. Rel. 1900, p. 13.

And in answering the same contention advanced in the case of Miss Meta Schwartz in 1902, Secretary Hay said: "The law (Rev. Stat. § 2172 [U. S. Comp. Stat. 1901, p. 1334]) is anomalous enough in permitting the minor son of an alien to come to the United States immediately before his father's naturalization here, and to leave this country a full-fledged citizen the day after such naturalization. To construe the statute as conferring citizenship upon a minor who is not in the United States at the time of the father's naturalization, nor subsequently, would be to needlessly open the door to further abuses of our citizenship." Mr. Hay to Mr. Hardy, July 15, 1902, MSS. Inst. to Switzerland. See also the case of Antonio Basile, For. Rel. 1902, p. 685.

48. Mode of parents' naturalization immaterial.—The language of the statute is: "The children of persons who have been duly naturalized under any law of the United States," etc. It does not matter in what lawful mode the naturalization of the parent is effected. A treaty is just as much a law of the United States as an act of Congress. Hence, it was held that the minor child of one who became a citizen under article 2 of Jay's treaty (8 Stat. at L. 116), if residing in the United States at the time, thereby became a citizen. *Crane v. Reeder*, 25 Mich. 303.

So, where a resident alien woman married a naturalized citizen of the United States, her nine-year-old son, dwelling with her, became a citizen by virtue of the provisions of § 2172, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1334). *United States v.*

Kellar, 11 Biss. 314, 13 Fed. 84. The mother became "duly naturalized" by her marriage to an American citizen, under § 1994, Rev. Stat. (U. S. Comp. Stat. 1901, p. 1268), which will form the subject of the next chapter. The court said: "The marriage of the defendant's mother with a naturalized citizen was made, by the statute, an equivalent, in respect of citizenship, to formal naturalization under the acts of Congress. Thenceforward she was to be regarded as having been duly naturalized under the laws of this country, and her infant son, then dwelling in this country, was therefore to be considered, not an alien, but as a citizen." See also *Gumm v. Hubbard*, 97 Mo. 311, 10 Am. St. Rep. 312, 11 S. W. 61, and *Kreitz v. Behrensmeyer*, 125 Ill. 141, 8 Am. St. Rep. 349, 17 N. E. 232, For. Rel. 1900, p. 527.

In the last case, two children born in Canada of British parents were brought to the United States upon the death of their father; and the mother married an American citizen. Upon an application for a passport, Secretary Hay said: "Under our law the two persons referred to are citizens of the United States. By her second marriage the mother acquired American citizenship by virtue of the provisions of § 1994 of the Revised Statutes of the United States (U. S. Comp. Stat. 1901, p. 1268), which reads as follows: 'Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.' Rev. Stat. § 2172 (U. S. Comp. Stat. 1901, p. 1334), declares that 'the children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof.' Any possible question whether, by the marriage of the mother, she became duly

naturalized is set at rest by the decision of the United States circuit court in the case of the *United States v. Kellar*, 11 Biss. 314, 13 Fed. 84, in which the court held that the mother, an alien, by her marriage to a naturalized citizen of the United States, became 'duly naturalized.' . . . In the opinion of the Department the persons referred to are entitled to passports as citizens of the United States." For. Rel. 1900, p. 527.

The minor son of an alien, who has been naturalized under Rev. Stat. § 2172 (U. S. Comp. Stat. 1901, p. 1334), by the naturalization of his father in the United States, has "become a naturalized citizen of the United States," within the meaning of the naturalization treaty between the United States and Württemberg (6 Stat. at L. 735). Act'g Sec'y Adees to Mr. White, July 15, 1902, MSS. Inst. Germany.

The naturalization of an alien woman, a widow, confers citizenship upon her minor son, under this section.

When a woman, by the death of her husband, becomes the head of the family, her naturalization should carry with it the same consequences, as regards the children, as would have attended that of the father had he been living. Cockburn, *Nationality*, p. 213.

A bastard who is legitimated by the intermarriage of his natural father and mother, the mother being an alien and the father an American citizen, becomes a citizen of the United States by virtue of the provisions of Rev. Stat. § 2172 (U. S. Comp. Stat. 1901, p. 1334). See Sec'y Hay to Mr. White, March 3, 1899, MSS. Inst. to Germany.

This is not the case, however, where the mother is Chinese, and hence not capable of being lawfully naturalized. Inst. to Consul General at Shanghai, March 25, 1903.

CHAPTER III.

NATURALIZATION BY MARRIAGE.

- 49. In general.
- 50. Women who may be naturalized by marriage.
- 51. Time of marriage.
- 52. Necessity of residence in the United States.
- 53. Nature of citizenship acquired.
- 54. Widow and minor children of deceased declarant.
- 55. Citizenship of American woman married to an alien.
- 56. — Case of Nellie Grant Sartoris.
- 57. — Effect of divorce.

49. In general.— Before the passage of the act of February 10, 1855 (10 Stat. at L. 604, chap. 71, Rev. Stat. § 1994, U. S. Comp. Stat. 1901, p. 1268), marriage had no effect upon the citizenship of a woman; under our laws an alien woman marrying a citizen remained an alien still. *Shanks v. Dupont*, 3 Pet. 242, 7 L. ed. 666. This was in virtue of the common-law doctrine that no person can by any act of his own, without the consent of the government, put off his allegiance and become an alien. The British act of 1844 (7 & 8 Vict. 154, chap. 66) declared “that any woman married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject.”

The American law is based on the British act.

Section 2 of the act of February 10, 1855, reads as follows: “Any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of

the United States, shall be deemed and taken to be a citizen" of the United States.

The language of the law as incorporated in the Revised Statutes of the United States, § 1994 (U. S. Comp. Stat. 1901, p. 1268), is as follows: "Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

The power of Congress to enact a uniform rule of naturalization throughout the United States authorizes the provision of Rev. Stat. § 1994 (U. S. Comp. Stat. 1901, p. 1268), that the marriage of an alien woman with a citizen makes her a citizen. *Dorsey v. Brigham*, 177 Ill. 250, 42 L. R. A. 809, 69 Am. St. Rep. 228, 52 N. E. 303.

Any woman capable of naturalization under our laws, who is married to a citizen of the United States, is to be deemed a citizen.

50. Women who may be naturalized by marriage.—What women may be naturalized? What is the meaning of the clause "who might herself be lawfully naturalized?"

In *Burton v. Burton*, 26 How. Pr. 474, it was held the act was designed for the benefit of "alien white women."

The Supreme Court of the United States, in *Kelly v. Owen*, 7 Wall. 496, 19 L. ed. 283, expressed the opinion that the terms of the act limit the application of the law to "free white women."

In *Kane v. McCarthy*, 63 N. C. 299, it was decided that "a white woman not an alien enemy" answered the description required by the section under consideration. To the same effect is 14 Ops. Atty. Gen. 406. See also Sec'y Hay to Mr. Cruger, February 6, 1903.

In *Leonard v. Grant*, 6 Sawy. 603, 5 Fed. 11, which was decided after the extension by the act of July 14, 1870 (16 Stat.

at L. 254, chap. 254, § 7, U. S. Comp. Stat. 1901, p. 1333), of the naturalization laws to the African, it was declared that the law applied to "free white persons, or persons of African nativity or descent."

And in *Broadis v. Broadis*, 86 Fed. 951, it was held that an alien woman of African descent, married to a citizen of the United States, is a citizen of the United States, since the extension of the naturalization laws to persons of African birth or descent.

The act of August 9, 1888 (25 Stat. at L. 392, chap. 818, § 2), provides that every Indian woman, member of any Indian tribe in the United States, or any of its territories except the five civilized tribes in the Indian territory, who may hereafter be married to any citizen of the United States, is declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman.

As the law now stands, therefore, any white woman, or woman of African nativity or descent, or Indian woman, a member of any Indian tribe (except a member of the five civilized tribes in Indian territory), married to a citizen of the United States, is a citizen thereof.

51. Time of marriage.—What is the significance of the term "married" in the section under consideration? In order to confer citizenship upon the wife, must the husband be a citizen at the time of marriage, or does his subsequent naturalization have the same effect?

Kelly v. Owen, 7 Wall. 496, 19 L. ed. 283, was a case in which it appeared that one Miles Kelly, a native of Ireland, emigrated to the United States in 1848. In 1853 he married Ellen Duffy; in 1855 he was naturalized; and in 1862 he died in the city of Washington, intestate, seised of certain real property.

He left surviving him in the United States, his widow, the said Ellen, and two sisters, Ellen Owen and Margaret Kahoe. The sister Ellen arrived in 1856, and was married in 1861 to Edward Owen, who had been naturalized in 1835. The sister Margaret arrived in the United States in 1850, and was married in 1862, to James Kahoe, who was naturalized in 1854. Mr. Justice Field, delivering the opinion of the court, said that the case turned upon the construction given to the 2d section of the act of Congress of February 10, 1855 (10 Stat. at L. 604, chap. 71, U. S. Comp. Stat. 1901, p. 1268). He said: "As we construe this act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide. The terms 'married,' or 'who shall be married,' do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that whenever a woman, who under previous acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the act or subsequently, or before or after the marriage, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers, under the act, citizenship upon her. The construction which would restrict the act to women whose husbands, at the time of marriage, are citizens, would exclude far the greater number, for whose benefit, as we think, the act was intended. . . . It follows, from these views, that the widow and the two sisters were citizens of the United States upon the decease of the intestate husband. The widow and Margaret Kahoe became such on the naturalization of their respective husbands, and Ellen Owen became such on her marriage."

And in *Kane v. McCarthy*, 63 N. C. 299, where the facts showed that the naturalization of the husband took place after

the marriage, the court said: "The circumstance that the husband was not a citizen at the time of marriage is wholly immaterial, for he became a citizen afterward *ipso facto*." Referring to the wife, the court said: "Being a free white woman married to a citizen, [she] comes within the description and the very words of the act of Congress [10 Stat. at L. 604, chap. 71, § 2, U. S. Comp. Stat. 1901, p. 1268], 'and is deemed and taken to be a citizen;' for it is the status of being married to—being the wife of—a citizen that makes her one. It can in no possible view make any difference whether the marriage ceremony is performed first and then the husband becomes a citizen, or whether he becomes a citizen first and the marriage afterwards takes place. Whenever the two events concur and come together 'she is a woman married to a citizen.'" See also 14 Ops. Atty. Gen. 406. The fact that the wife is under twenty-one years of age does not exclude her from citizenship. She acquires citizenship when her husband becomes a citizen. *Renner v. Müller*, 57 How. Pr. 229.

The wife of an alien becomes a citizen upon the naturalization of her husband. *People v. Newell*, 38 Hun, 78.

52. Necessity of residence in the United States.— It has been contended that an alien woman, in order to be naturalized by marriage to an American citizen, must have resided in the United States for the statutory period of five years. In *Burton v. Burton*, 1 Keyes, 359, the judges of the court of appeals of New York were divided in opinion upon this point. Mr. Justice Mullin said: "If a residence of five years was not a condition precedent to citizenship, residence for some length of time was most obviously contemplated. Without residence she could not be naturalized, and it is the most essential of all the requirements for naturalization, and cannot be dispensed with, unless the intention to dispense with it is most clearly manifested by

the legislature." But Mr. Justice Wright thought that the act did not require that the woman claiming its benefits should have resided within the United States; and, if it did, he thought the residence of the wife was, by construction of law, the same as that of her husband.

In the opinion of Attorney General Williams (14 Ops. Atty. Gen. 402) an alien woman residing abroad, who has intermarried with a citizen of the United States residing abroad, the marriage having been solemnized abroad, and the parties after marriage continuing to reside abroad, is to be regarded as a citizen of the United States within the meaning of said act, though she may never have resided within the United States.

In *Kane v. McCarthy*, 63 N. C. 299, it was decided that a woman who, in 1857, married in Ireland a naturalized citizen of the United States, was a citizen of the United States, although she always resided in Ireland.

The circuit court of the United States, in the case of *Ware v. Wisner*, 50 Fed. 310, held that a nonresident alien woman who marries a citizen of the United States is capable of inheriting, in Iowa, since she thereby becomes a citizen of the United States, under Rev. Stat. § 1994 (U. S. Comp. Stat. 1901, p. 1268).

In *Headman v. Rose*, 63 Ga. 458, it was held that an alien woman whose husband becomes a naturalized citizen of the United States, is, under § 2 of the act of 1855 (10 Stat. at L. 604, chap. 71, U. S. Comp. Stat. 1901, p. 1268), thereby made a citizen, though she may live at a distance from her husband for years, and never come to the United States until after his death.*

*But Secretary Olney expressed the opinion that the naturalization of a Turkish subject in the United States does not operate to naturalize his wife, who has never been in the United States, and who is at the time dwelling in a foreign country. He said: "The naturalization laws of the United States being obviously framed to permit the bestowal of the franchise of

In the case of *Pequignot v. Detroit*, 16 Fed. 215, the court said: "All doubt upon the construction to be placed upon the words, 'who might herself be naturalized,' was put at rest by the case of *Kelly v. Owen*, 7 Wall. 496, 19 L. ed. 283, in which it was held that these terms only limited the application of the law to 'free white women,' inasmuch as the naturalization act existing at the time only required that a person applying for its benefits should be a 'free white person,' and not an alien enemy."

53. Nature of citizenship acquired.—What is meant by the phrase, "shall be deemed a citizen," in the section of the Revised Statutes under consideration?

"The phrase, 'shall be deemed a citizen,' in § 1994, Rev. Stat. [U. S. Comp. Stat. 1901, p. 1268], or as it was in the act of 1855 [10 Stat. at L. 604, chap. 71, § 2], 'shall be deemed and taken to be a citizen,' while it may imply that the person to whom it relates has not actually become a citizen by the ordinary means or in the usual way, as by the judgment of a competent court, upon a proper application and proof, yet it does not follow that such person is on that account practically any the less a citizen. The word 'deemed' is the equivalent of 'considered' or 'judged,' and therefore, whatever an act of Congress requires to be 'deemed' or 'taken' as true of any person or thing must, in law, be considered as having been duly adjudged or established concerning such person or thing, and have force and effect accordingly. When, therefore, Congress declares that an alien woman shall, under certain circumstances, be 'deemed' an American citizen, the effect, when the contingency occurs, is equiva-

citizenship upon certain persons of alien birth who are within its jurisdiction, and the application of these statutes being intrusted to the judicial branch, it is clear that they cannot operate to naturalize by indirection or by executive interpretation a person who is an alien by birth and origin, who has never been within the jurisdiction of the United States, and who at the time may be dwelling within a foreign jurisdiction." S. Doc. No. 83; 1st Session, 54th Congress.

lent to her being naturalized directly by an act of Congress or in the usual mode thereby prescribed." *Leonard v. Grant*, 6 Sawy. 603, 5 Fed. 16.

The Supreme Court said, in *Kelly v. Owen*, 7 Wall. 496, 19 L. ed. 283, that the object of the act was to allow the citizenship of the wife "to follow that of her husband, without the necessity of any application for naturalization on her part."

In *United States v. Kellar*, 11 Biss. 314, 13 Fed. 83, Mr. Justice Harlan said that the woman, "upon her marriage, therefore, with a naturalized citizen of the United States, . . . became, under the plain words of § 1994 [U. S. Comp. Stat. 1901, p. 1268], *ipso facto*, a citizen of the United States, as fully as if she had complied with all the provisions of the statutes upon the subject of naturalization."

And in Haberacker's case, Mr. Wharton, Acting Secretary of State, in an instruction to Mr. Phelps, said: "It is uniformly held, under § 1994 [U. S. Comp. Stat. 1901, p. 1268], that an alien woman who might herself be lawfully naturalized by marriage to a citizen becomes herself a citizen without any previous declaration or act on her part, or without reference to the previous length of her residence in this country, as fully to all intents and purposes as if she had become a citizen upon her own application and by the judgment of a competent court." Mr. Wharton to Mr. Phelps, March 26, 1891, MSS. Inst. to Germany, For. Rel. 1891, p. 508.

54. Widow and minor children of deceased declarant.—As has been stated heretofore (§ 43), when an alien dies after declaring his intention to become a citizen of the United States, but before he has been admitted to citizenship, the wife and minor children may become citizens by taking the oaths prescribed by law. This is in virtue of the provisions of Rev. Stat. § 2168 (U. S. Comp. Stat. 1901, p. 1332), which reads as follows: "When

any alien who has complied with the first condition specified in § 2165 [U. S. Comp. Stat. 1901, p. 1328], dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law."

It is to be observed that the widow and children do not become citizens upon the death of the husband and father. They must apply to the proper court, submit the requisite proof of the declaration of the alien, and his death, and take the oaths prescribed by the general naturalization laws upon the admission of an alien to citizenship.

55. Citizenship of American woman married to an alien.—

Under the statute which we have been considering, an alien woman who marries a citizen of the United States is deemed a citizen. Is the converse of this rule true? Does an American woman become an alien by marriage to a foreigner? There is no statutory declaration to that effect.

In the Case of Mrs. Preto (10 Ops. Atty. Gen. 321), a woman born in the United States, of American parents, who married a Spanish subject residing here, and subsequently removed with her husband to Spain, where she lived until his death, Attorney General Bates, in 1862, held that the marriage did not deprive her of her native citizenship.

And in 1877, in Mrs. D'Ambrogia's Case (15 Ops. Atty. Gen. 599) Solicitor General Phillips decided that the marriage of an alien-born woman to a naturalized citizen of the United States conferred on her "a permanent status of citizenship, defeasible only as in the case of other persons;" and, on the authority of *Shanks v. Dupont*, 3 Pet. 242, 7 L. ed. 666, it was further held that her subsequent marriage with an alien did not affect this status.

But in 1866, in the case of Mrs. Berthemy (12 Ops. Atty. Gen. 7), who was born in France, of American parents, there married a Frenchman, and continued to reside in France after the death of her husband, Attorney General Stanbery held that she was not a citizen of the United States.

And, in 1869, Attorney General Hoar expressed the opinion that the same woman, who was still domiciled in France, was not a citizen of the United States for the purposes of the internal revenue law. The Attorney General however, expressly disclaimed any opinion upon the question whether a native woman marrying an alien "is not, after such marriage, a citizen of the United States in a qualified sense." 13 Ops. Atty. Gen. 128.

In the claim of the heirs of *Felix Mahan v. Mexico*, American and Mexican claims commission, convention of 1868 (15 Stat. at L. 679), the umpire held that the daughter of the original claimant, who was married to a Spaniard, was not a citizen of the United States. Moore, International Arbitrations, 2485.

In the cases of *Bowie v. United States*, and *Calderwood v. United States*, and *Tooren v. United States*, before the American and British claims commission, treaty of 1871 (17 Stat. at L. 841), it was held that the national character of a married woman is governed by that of her husband in all cases, irrespective of domicile; and that on the death of the husband the national character of the widow, acquired by marriage, remains unchanged. From this conclusion Mr. Commissioner Frazer (the American commissioner) dissented in the case of a widow of American origin who had always remained domiciled in the United States, holding that in such case, upon the death of her British husband, her original national character reverted. In the case of Mrs. Bowie, the claimant was by birth a British subject, but was at the time of the alleged injuries the widow of a

citizen of the United States, and domiciled in the insurrectionary state of Virginia, and before the filing of her memorial had again intermarried with a citizen of the United States, who was still living and there domiciled. Her claim was disallowed, all the commissioners agreeing. In the case of Mrs. Tooren, claimant was by birth a British subject, her husband at the time of marriage being a subject of Sweden, but naturalized as a citizen of the United States subsequent to the marriage. Claimant and her husband were both domiciled from the time of marriage within the United States. Her claim was unanimously dismissed. Hale's Report, 17; Moore, International Arbitrations, 2486.

In the case of *Jane L. Brand v. United States*, American and British Claims commission, treaty of 1871 (17 Stat. at L. 863), claimant, a native of Ireland, married in New Orleans a citizen of the United States, who died, and she continued domiciled in New Orleans. The commission held that the national character of a married woman was in all cases determined by that of her husband; and that such national character, once acquired by marriage, continues on the death of the husband; that this doctrine had always prevailed in Great Britain, as well as elsewhere, where the domicil of the wife and widow had continued to be that of the husband's nationality; and that by no treaty stipulation or law, municipal or international, was the widow even allowed to reclaim her original nationality while still domiciled within the nationality of her husband, until the conventions of 1870 and 1871; and that by those conventions she could only reclaim her original nationality in the form provided by the convention of 1871, which in the case of Mrs. Brand had never been done; that she was therefore, both at the time of the commission of the alleged wrongs, and at the time of the presentation of her memorial, a citizen of the United States. The claim was dis-

missed for want of jurisdiction. Moore, International Arbitrations, 2487, 2488.

In the cases of Mrs. De Brissot and Mrs. Hammer, before the United States and Venezuelan commission sitting in Washington, the claimants were born in Venezuela and married citizens of the United States. They were domiciled in Venezuela, and continued to reside there after the death of their husbands. Their claim against the Venezuelan government was for the killing of their husbands. It was held that, inasmuch as they were Venezuelan citizens according to Venezuelan law, and that law and the law of the United States being thus in conflict, the matter must be decided by the public law. On that basis the claim of the Venezuelan government was considered the better, the claimants were treated as Venezuelan citizens, and their claims ruled out for want of jurisdiction. Opinion of Commissioners, pp. 481, 484.

In several cases before the British and American mixed commission, under the treaty of Washington (17 Stat. at L. 863), it was held that a married woman's nationality is governed by that of her husband in all cases, irrespective of domicile, and remains unchanged after his death. Hence, that an American woman married to a British subject, and who continued to live in this country after his death, was still a British subject. The American commissioner dissented from this decision (U. S. Agent's Report, pp. 17, 18, vol. 6, Washington Arbitration). These claims arose before the passage of the British act of 1870 (33 & 34 Vict. 104, chap. 14).

In *Pequignot v. Detroit*, 16 Fed. 211, it was decided (in 1883) by the United States circuit court, that an alien woman who has once become an American citizen by marriage, which is subsequently dissolved, may resume her alienage by marriage to a native of her own country. In this case Judge Brown (now

Associate Justice of the United States Supreme Court) expressed doubt as to the binding force of *Shanks v. Dupont*, 3 Pet. 242, 7 L. ed. 666, in its literalisms, because the two reasons given for that decision have ceased to exist, *viz.*: (1) that the general doctrine is "that no persons can, by any act of their own, without the consent of the government, put off their allegiance and become aliens;" (2) that, "if it were otherwise, then a *feme* alien would by marriage become, *ipso facto*, a citizen, and would be dowable of the estate of her husband, which are clearly contrary to law."

In view of the act of July 27, 1868 (Rev. Stat. § 1999, U. S. Comp. Stat. 1901, p. 1269), expressly recognizing the right of expatriation, and the act of February 10, 1855 (Rev. Stat. § 1994, U. S. Comp. Stat. 1901, p. 1268), declaring that any woman married to an American citizen shall be deemed a citizen, Judge Brown said that it seemed to him "that we ought to apply the maxim, *Cessante ratione, cessat lex*, to this case, and are not bound to treat it as controlling authority." He added: "We should regard the sections above quoted as announcing the views of Congress upon this branch of international law, and ought to apply the same rule of decision to a case where a female American citizen marries an alien husband, that we should to a case where an alien woman marries an American citizen."

In *Comitis v. Parkerson* (decided in 1893) 22 L. R. A. 148, 56 Fed. 556, the plaintiff, a native citizen of Louisiana, married a native-born subject of Italy who had come to Louisiana and engaged in business, without intending ever to return to Italy. He never became naturalized. After the marriage, the woman and her husband, until his death, lived together in Louisiana without any intention on the part of either to depart from the United States. After the husband's death the widow continued to reside in Louisiana. The court (Billings, J.) held that ex-

patriation must be effected by removal from the country, and that, in the absence of any act of Congress authorizing it, there can be no implied renunciation of citizenship by an American woman marrying an alien. To the report of the case in 22 L. R. A. 148, is appended an editorial note in which the cases bearing on the effect of marriage on the wife's status are collated.

In *Jenns v. Landes*, 85 Fed. 801, it appeared that the complainant was born in the state of Washington, and lived with her father until the year 1896, when she permanently removed from the state of Washington, and was married to a British subject; that she and her husband resided in Canada, and had their domicile in the city of Victoria. The Canadian statute of 1886, vol. 2, chap. 113, § 22, declared that "a married woman shall, within Canada, be deemed to be a subject of the state of which her husband is for the time being a subject." The court held that the complainant became an alien, as respects the United States, so as to enable her to sue in a Federal court.

In *Ruckgaber v. Moore*, 104 Fed. 947, the United States circuit court for the eastern district of New York held that the political status of a native-born American woman, who married a citizen of France and removed with him to that country, followed that of her husband. The woman having died in France, the court declared that she must be regarded as having been a nonresident alien at the time of her death. The court said: "By the several statutes of America, France, and Great Britain the marriage of a citizen of such country with an alien wife confers upon the latter the citizenship of the husband; and this policy of three great powers, in connection with § 1999 of the Revised Statutes [U. S. Comp. Stat. 1901, p. 1269], which proclaims that expatriation is an inherent right, establishes that the political status of the wife follows that of her husband, with the modification that there must be withdrawal from her native

country, or equivalent act expressive of her election to renounce her former citizenship as a consequence of her marriage. Some serious objections to this, or even the opposite conclusion, exist, but it has been reached after due consideration of the subject, and pertinent authorities, including *Shanks v. Dupont*, 3 Pet. 243, 7 L. ed. 667; *Pequignot v. Detroit*, 16 Fed. 211; and *Comitis v. Parkerson*, 22 L. R. A. 148, 56 Fed. 556."

For the same reason, the court declared that the daughter of the deceased, who had intermarried with a citizen of Germany and for eight years previous to her mother's death had resided there, should be regarded as a citizen of that country.

The question was presented to the Department of State in 1871. In this case an American woman had married an alien, and after his death applied to our legation in Paris for a passport. Secretary Fish, in an instruction to Mr. Washburne, said: "By the law of England and the United States, an alien woman on her marriage with a subject or citizen merges her nationality in that of her husband. But the converse has never been established as the law of the United States, and only by the act of Parliament of May 12, 1870 [33 & 34 Vict. 104, chap. 14], did it become British law that an English woman lost her quality of a British subject by marrying an alien. The continental Codes, on the other hand, enable a woman whose nationality has been changed by marriage to resume it when she becomes a widow, on the condition, however, of her returning to the country of her origin. The widow to whom you refer may, as a matter of strict right, remain a citizen, but, as a citizen has no absolute right to a passport, and as the law of the United States has, outside of their jurisdiction, only such force as foreign nations may choose to accord it in their own territory, I think it judicious to withhold passports in such cases unless the widow gives evidence of her intention to resume her residence in

the United States." Sec'y Fish to Mr. Washburne, February 24, 1871, MSS. Inst. to France.

Secretary Fish, in a letter to the President, dated August 25, 1873, said: "Chief Justice Marshall (*Murray v. The Charming Betsy*, 2 Cranch, 119, 2 L. ed. 226) says that when a citizen by his own act has made himself the subject of a foreign power, his situation is completely changed, and the act certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance. . . . Hence, it would seem that the marriage of a female citizen of the United States with a foreigner, subject of a country by whose laws marriage confers citizenship upon the wife of its subject, and her removal to and residence in the country of her husband's citizenship, would divest her of her native character of an American citizen." For. Rel. 1873, pt. 2, p. 1187.

In 1874 the case was presented of an American lady, native born, who, after arriving at womanhood, went to Europe and married an Englishman; after living many years with her husband and having children by him, she obtained a divorce in England. She applied to the United States legation in Paris for a passport, to be issued in her maiden name and as an American citizen. Mr. Washburne, the United States Minister, declined giving such a passport for the reasons: "(1) That there is nothing in the decree of divorce authorizing her to take her maiden name; and that I am not advised that the laws of England, independent of the order in the decree, authorize a divorced woman, at her option, to take her maiden name. (2) Touching the question of citizenship, I consider her case analogous to that decided by you in your despatch dated February 24, 1871, *supra*, where you decided that it would be judicious to withhold a passport in a case where an American woman had married a foreigner, and her husband had afterwards died, unless she gave evidence of her intention to re-

sume her residence in the United States. In the present case, the party desiring the passport not only does not 'give evidence of her intention to resume her residence in the United States,' but avows that her purpose in obtaining a passport in her maiden name is to enable her to marry a Frenchman."

Mr. Washburne said that it was strongly contended by the parties interested that the decree of divorce dissolved the nationality of the woman as well as the bonds of matrimony. He added that he did not take this view of the subject, but he had been pressed with so much insistence to give the passport that he had to promise to submit the question to the Department for its decision. The course pursued by the minister was approved by Secretary Fish. For. Rel. 1874, pp. 408, 413.

In the case of Mrs. Lawrence, a native of Great Britain, who married a citizen of the United States, from whom she obtained a divorce, Acting Secretary Uhl held that "Mrs. Lawrence, by her marriage, became an American citizen, both by British and American law; she is undoubtedly still an American citizen, viewed either from the American or the English standpoint. She has not lost her American nationality by any method recognized by our law; and, according to British law, an English woman, who by marriage acquires foreign citizenship, must, in order to reacquire her original nationality upon her husband's death, obtain a certificate therefor from the British authorities. It is not believed that any different rule would be applied where the parties are divorced. As Mrs. Lawrence claims American citizenship, it is assumed that she has not taken any steps to reacquire British nationality. It is not understood, either, that there is any conflicting claim to her allegiance." Mr. Uhl to Mr. Denby, January 30, 1894, For. Rel. 1894, p. 139.

The question was again presented to Secretary Fish in De-

gallado's case. He said: "It would seem that the marriage of a female citizen of the United States with a foreigner, the subject of a country by whose laws marriage confers citizenship upon the wife of a subject, and her removal out of the jurisdiction of the United States and residence in the country of her husband's citizenship, would divest her of her native citizenship." He added: "But, although the marriage of a female citizen of the United States with a foreigner should make her a citizen of the country to which her husband belongs, it does not necessarily follow that she becomes subject to all the disabilities of alienage, such, for instance, as inability to inherit or transfer real property." Mr. Fish to Mr. Williamson, September 22, 1875, MSS. Inst. to Costa Rica.

In 1886 Mr. Bayard, in the case of Mrs. Zografo, held that a native-born American woman, who marries a Turkish subject and takes up her residence in Turkey, becomes a Turkish subject. Upon the death of her husband, in order to revive her American nationality, she must leave Turkey and take up an American residence. Mr. Bayard to Mr. Zografo, February 6, 1886, MSS. Dom. Let.

In 1887 Mrs. Arana, who had been born in the United States in 1846 of American parents, and had married, in 1869 a Spanish subject, claimed that, by the death of her husband in 1883, her United States citizenship had reverted. She applied to the United States minister to Salvador for a passport. Secretary Bayard, in instructing the minister, quoted from Secretary Fish's instruction of February 24, 1871, to Mr. Washburne, *supra*, and said that he was not disposed to depart from this precedent. He held that Mrs. Arana, so long as she remained without the jurisdiction of this government was not entitled to the privileges of a citizen of the United States, so far, at least, as would entitle her to diplomatic interposition against the govern-

ment of Salvador on a claim accruing since her marriage and departure from the United States. Sec'y Bayard to Mr. Hall, January 6, 1887, For. Rel. 1887, p. 92.

In February, 1890, in the case of Carl Heisinger, Mr. Blaine said that the Department had several times taken the view that the marriage of an American woman to a foreigner does not completely divest her of her original nationality; that her American citizenship was held for most purposes to be in abeyance during coverture, but to be susceptible of revival by her return to the jurisdiction and allegiance of the United States. Sec'y Blaine to Mr. Phelps, February 1, 1890; MSS. Inst. to Germany, For. Rel. 1890, p. 302.

In an instruction to the United States consul at Sagua la Grande, June 7, 1895, Acting Secretary Uhl said: "The view has been taken by this Department in several cases that the marriage of an American woman to a foreigner does not completely divest her of her American citizenship, but that the same is only suspended during coverture, and reverts upon the death of her husband, if she is residing in the United States, or upon her returning to this country if she is residing abroad." Mr. Uhl to Mr. Barker, MSS. Inst. to Consuls.

In this case, Mrs. Dixon, a native American woman, had married, in 1872, a British subject who died in 1884, while residing with his family in Cuba. It appeared that Mrs. Dixon desired to come to the United States, but was prevented by her poverty. The consul was directed to extend protection to her. See also Sec'y Hay to Mr. Mesa, December 2, 1898, MSS. Dom. Let.; also Mr. Cridler, Asst. Sec'y to Consul at Ponta Delgada, October 2, 1900.

In October, 1895, Mrs. Beatens, a native-born American woman, who had, in 1889, married a Hollander residing in the United States, applied for a passport as an American citizen. She was temporarily sojourning in Germany for the purpose of

completing her musical education. In a letter to the Secretary of Agriculture, who had transmitted Mrs. Beaten's application, Secretary Olney, after citing the decisions of the courts, and of the Attorneys General on the subject of citizenship of married women, said: "It has been the uniform practice of this Department to decline to grant passports to American women who are married to aliens. In my opinion, the Department would not be warranted in departing from this practice in the present case." Mr. Olney to Mr. Morton, MSS. Dom. Let. October 26, 1895.

In the spring of 1897 the New York legislature passed an act providing that any woman born a citizen of the United States, who shall have married, or who shall marry, an alien, and the foreign-born children and descendants of any such woman, shall, notwithstanding her or their residence or birth in a foreign country, be entitled to take, hold, convey, and devise real property situated within the state, in like manner and with like effect as if such woman and such foreign-born children and descendants were citizens of the United States; and the title in any such real property shall not be impaired or affected by reason of such marriage or residence or foreign birth; provided that the title to such property shall have been, or shall be, derived from or through a citizen of the United States. 55 Alb. L. J. 372.

And Secretary Sherman, in an instruction to the United States minister at St. Petersburg, March 15, 1897, said: "By our statute an alien wife of an American citizen shares his citizenship. By the usual rules of continental private international law a woman marrying an alien shares his status, certainly during his life; but thereafter, on widowhood, reverts to her original status unless she abandons the country of her origin and returns to that of her late husband." For. Rel. 1901, p. 443.

These authorities are not entirely uniform. But the decided

weight of authority is to the effect that the marriage of an American woman to an alien confers upon her the nationality of her husband.

Cockburn, in his work on Nationality (published in 1869), says: "In every country, except where the English law prevails, the nationality of a woman on marriage merges in that of her husband; she loses her own nationality and acquires his." p. 24. Since this was written, the British act of 1870 has been passed, which expressly declares that a married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.

The practice of the Department of State, alluded to above, of declining to grant passports to American-born women who are married to foreigners, clearly shows the recognition of this principle by the Executive Department of our government.

The tendency of opinion seems to be in favor of allowing the woman, upon the death of her husband, to resume her American citizenship, if she desire, on condition that she return to the United States, if residing abroad.

It has been held in France that, while a French woman who marries a foreigner loses her French nationality in his, she recovers it on his death, she residing at the time in France. Wharton, *Conf. L.* § 11, and note. The British act of 1870 (33 & 34 Vict. 104, chap. 14), provides that when a British woman, who, by marriage to an alien, has become an alien, is left a widow, she can, by means of certain formalities, regain her British citizenship.

Cockburn says (p. 25): "Provision is made, in all the continental Codes, for enabling a woman whose nationality of origin has thus been changed into that of her husband, to resume, if so minded, her original nationality on becoming a widow; on the condition, however, if not resident in the country of origin, of returning to it."

So, it has been held repeatedly by the Department of State that the nationality of origin of an American-born woman reverts upon the death of her alien husband if she is residing in the United States, or upon her returning to this country, if residing abroad.

56. — Case of Nellie Grant Sartoris.— By article 1 of the convention relative to naturalization, concluded between the United States and Great Britain May 13, 1870 (16 Stat. at L. 775), it was provided that "citizens of the United States of America, who have become, or shall become, and are, naturalized according to law within the British dominions as British subjects, shall . . . be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States."

Article 3 provides that "if any such citizen of the United States as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence in the United States, the United States government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a citizen of the United States, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization."

In 1874 Nellie Grant, daughter of President Grant, married Algernon Sartoris, a British subject, and went to England, where she resided until his death in 1896. In May, 1898, the following joint resolution of Congress was adopted readmitting Mrs. Sartoris to American citizenship, in pursuance of the above treaty. Resolution May 18, 1898 (30 Stat. at L. 1496):

"Whereas, Nellie Grant Sartoris, widow, daughter of the late General Ulysses S. Grant, being a natural-born citizen of the United States, married in eighteen hundred and seventy-four

Algernon Charles Frederick Sartoris, a subject of the Queen of Great Britain, and emigrated to Great Britain, becoming thereby, under the laws of Great Britain, a naturalized British subject, to be recognized as such by the United States, according to the provisions of the convention relative to naturalization between the United States and Great Britain of the thirteenth of May, eighteen hundred and seventy; and

“Whereas, the said Nellie Grant Sartoris has since returned to the United States and renewed her residence therein, and petitioned Congress to be readmitted to the character and privileges of a citizen of the United States under and by virtue of the provisions of article third of the convention aforesaid: Therefore,

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Nellie Grant Sartoris, daughter of General Ulysses S. Grant, be, and she is hereby, on her own application, unconditionally readmitted to the character and privileges of a citizen of the United States, in accordance with the provisions of article third of the convention relative to naturalization between the United States and Great Britain concluded May thirteenth, eighteen hundred and seventy.”

57. — Effect of divorce.— It is presumed that the decree of a competent court granting an absolute divorce would have the same effect as the death of the husband upon the citizenship of the woman.

Secretary Hay, in replying to the request of the United States minister at Berne for instructions as to the issuance of a passport to Mrs. Daisie Annie Newman Van Buren, the daughter of a native citizen of the United States, who had been married to Baron Van Buren, a Dutch subject, from whom she was subsequently divorced, said: “In accordance with the view which

the Department has taken in several cases, when an American woman marries an alien her condition from the standpoint of nationality is lost in that of her husband, as long as the marital union lasts. Upon its termination, she may resume the nationality of her birth by returning to the United States to reside, if residing abroad, or acquire a new one. In this case Mrs. Van Buren's status under the laws of the Netherlands calls for no consideration. She does not live in that country, nor does she, apparently, intend to do so. Her divorce having been lawfully obtained, her marital relations with Baron Van Buren having ceased, her domicil bona fide being in this country, you may properly issue a passport in her favor upon satisfactory proof of the facts as set forth in your despatch, and in the letter from the consul at Geneva." Mr. Hay to Mr. Leishman, March 16, 1899, MSS. Inst. to Switzerland.

CHAPTER IV.

NATURALIZATION BY TREATY.

58. In general.
59. Treaty of 1794 with Great Britain.
60. Treaty of 1803 with France.
61. — Case of Egle Aubry.
62. — Case of Foucher.
63. — Case of De Baca.
64. Treaty of 1819 with Spain.
65. Treaty of February 2, 1848, with Mexico.
66. Treaty of December 30, 1853, with Mexico (*Gadsden Treaty*).
67. Treaty of 1867 with Russia.
68. Treaty of 1898 with Spain.
69. — Status of Porto Ricans and Filipinos.
70. Treaties with Indians.

58. In general.— In addition to the general laws enacted by Congress, under which individuals may be naturalized, there have been numerous instances of collective naturalization by treaty.

The relations which the inhabitants of ceded territory shall bear to the acquiring state are generally determined by the treaty of cession. Every treaty of cession to which the United States has been a party, with the exception of the treaty of peace of 1898 (30 Stat. at L. 1754), with Spain, ceding Porto Rico and the Philippine islands to the United States, contains a stipulation providing that the inhabitants of the territory ceded may, in whole or in part, become citizens of the United States, either immediately or under certain conditions.

The treaty with Russia for the cession of Alaska (15 Stat. at L. 542) excepted “uncivilized native tribes” from the privilege of admission to citizenship.

The pertinent provisions of these several treaties are set out below, together with concrete cases in which they have been construed by the courts or international claims commissions.*

59. Treaty of 1794 with Great Britain.— Under the 2d article of the treaty of 1794 (8 Stat. at L. 116), between the United States and Great Britain, British subjects who resided at Detroit before and at the time of the evacuation of the territory of Michigan, and who continued to reside there afterwards without at any time prior to the expiration of one year from such evacuation declaring their intention of becoming British subjects, became, *ipso facto*, to all intents and purposes American citizens. *Crane v. Reeder*, 25 Mich. 303.

60. Treaty of 1803 with France.— By article 3 of the treaty of Paris of 1803 (8 Stat. at L. 200), ceding Louisiana to the United States, it was provided that “the inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible according to the principals of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.”

61 — Case of Egle Aubry.—Egle Aubry, a person of color, presented to the commission under the convention between the United States and France of January 15, 1880 (21 Stat. at L. 673), a memorial in which, in the character of a citizen of France, she claimed damages from the United States for the occupation of buildings by General Grover in the parish of St. Tammany, Louisiana, in February, 1864. In this memorial it was set forth, as the ground of the claimant’s French citizenship,

*The rights secured by treaty to aliens residing in the United States do not come within the scope of this treatise, and hence will not be discussed here. An elaborate editorial note on that subject will be found in *Riener’s Succession* (La.) 32 L. R. A. 177.

that she was born in the territory of Orleans, January 3, 1803, while that territory was a French colony.

Counsel for the United States demurred on the ground that, as the claimant was an inhabitant of the territory in question when it was ceded by France to the United States by the treaty of April 30, 1803 (8 Stat. at L. 200), she thereby became a citizen of the United States, inasmuch as the treaty of cession transferred to the United States full and complete jurisdiction over the inhabitants resident upon the territory without any reservation whatever on the part of the French government. In support of this position, counsel cited Wheaton's International Law, 6th ed. p. 627, where, in treating of "collective naturalization," the author mentions the convention of April 30, 1803.

Counsel for the memorialist relied upon the 3d article of the treaty, which is in these words: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

As memorialist was a person of color, whose citizenship was not recognized by the United States till the ratification of the 14th Amendment, her counsel contended that she had not, at the time her claim arose, enjoyed the advantages and immunities of a citizen of the United States, but that she remained a citizen of France, and as such was entitled to be "maintained and protected" in the "free enjoyment" of her "liberty, property, and religion." In support of this position he cited the case of one Decuir, whose father, a free negro, was an inhabitant of the territory of Louisiana when it was ceded to the United States.

The son, having been impressed into the Confederate service, was discharged by the superior court of Alexandria on a writ of habeas corpus upon the ground that he was not a citizen of Louisiana, and, consequently, that he was protected as a French subject under the 3d article of the treaty of 1803.

Upon the issues thus presented, the demurrer was sustained by the following decision of the commission: "The claimant, Egle Aubry, a colored woman, was born on the 3d day of January, 1803, in the territory of Louisiana, then a French colony, and therefore was by birth a citizen of France. On the 30th day of April, 1803, the territory of Louisiana was, by treaty, ceded by France to the United States. The treaty 'cedes to the United States forever and in full sovereignty the territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the treaty with Spain.' Spain had ceded the territory to France in October, 1801, and the cession did not affect slavery, which then existed there. The treaty of cession contains no provision by which the inhabitants could remain, or by their option choose to remain, French citizens. On the contrary, the 3d article of the treaty obviously contemplates that they were to be American citizens. Article 3 of the treaty is as follows: [Here follows the article as above quoted.] There is nothing in the treaty, therefore, to indicate that it was the intention, either of France, or of the United States, that the inhabitants, or any of them, were to remain citizens of France. On the contrary, it was intended that they should be citizens of the United States. The demurrer is sustained, and the claim is disallowed." Moore, International Arbitrations, 2511 *et seq.*

62. — Case of Foucher.—A claim against the United States, for the seizure and destruction of property by military authorities, was made before the same commission in behalf of the heirs

of Louis Frederick Foucher, Marquis de Circé, who died in France in 1869. It appeared that Foucher was born in 1798 in New Orleans, province of Louisiana, then a possession of Spain, and that he was residing there with his father in 1803, when the territory of Louisiana was ceded by France to the United States. He remained at New Orleans till 1836, when he removed to France, where he continued to reside till his decease. In France he exercised the rights and enjoyed the privileges of a citizen, owned a chateau, and assumed his inherited title; but there was no evidence of record that he was ever reinstated or naturalized in conformity with the French Code.

It was claimed by counsel for the United States, on the authority of the decision of the commission in the case of Egle Aubry (*supra*), that Foucher became a citizen of the United States by the treaty of cession in 1803; that his residence in France, even with the attending circumstances, did not entitle him to be considered a citizen of that country; and that consequently the commission could not take jurisdiction of the case; but it was admitted that the supreme court of the state of Louisiana, in a case entitled *De Circé's Succession*, 41 La. Ann. 506, 6 So. 812, had held that he was, at the time of his death, a French citizen within the meaning of both the French law and the law of Louisiana.

Counsel for the French Republic maintained that, inasmuch as the father of Louis Frederick Foucher was born in Louisiana when that province was within the jurisdiction of France, his descendant, Louis Frederick Foucher, was a citizen of France, and not affected by the cession of the territory of Louisiana by France to Spain, then by Spain to France, then by France to the United States. It was also claimed by counsel for the French Republic that the opinions of certain French lawyers, whose words were quoted in the brief, should be accepted as the evi-

dence of experts in regard to the law of France. M. Harrisse, speaking of the French law, said: "Citizenship is conferred in the forms given in my first cross-interrogatory. It is evidenced by public notoriety and enjoyment and practice of certain political rights which are conferred on French citizens only, such as the registry of voting at elections or inscription on the electoral lists. But, as the law does not prescribe the rules of evidence for such cases, it springs from circumstances." The certificate of the minister of the interior was also relied upon. He said, in substance, that Louis Frederick Foucher, Marquis de Circé, born at New Orleans, had been, in view of the evidence produced, considered to be French and inscribed on the electoral list of the seventh *arrondissement* of Paris for the years 1864 to 1869, and that his inscription on that list established, until the contrary was proved, that he was French. M. Jason, a French lawyer, who was examined as an expert, said: "I consider the French nationality of Louis Frederick Foucher, Marquis de Circé, as proved, first, by the judgment of the tribunal of the Seine of April 11, A. D. 1851, ordering the rectification of the birth certificate of his son, and the addition of the name of Circé, which had been omitted,—an addition which the tribunal could order only after the Marquis de Circé had established his quality of French citizen; second, by the inscription of L. F. Foucher de Circé on the electoral lists of the seventh *arrondissement* on presentation to the competent municipal officers of documents establishing his quality of French citizen."

The commission unanimously awarded \$9,200. Counsel for the United States in his final report, referring to this award, said: "This act was a recognition of the citizenship of Foucher in France; but whether the conclusion was reached upon the ground that the father of Foucher was a citizen of France and that the son, although born in the territory of Louisiana, then a

province of Spain, followed the condition of his father, or whether the commission were of opinion that the removal of Foucher to France in 1836, and his continuous residence there for a third of a century and during his life, coupled with the fact that he was recognized as a citizen of France, although formal proceedings, as required by articles 9 and 10 of the French Code, had not been complied with, justified the conclusion, legally, that he was a citizen of France, does not appear." *Arthur Denis, Testamentary Executor of L. F. Foucher, Marquis de Circé v. United States*, Moore, International Arbitrations, 2512 *et seq.*

63. — Case of De Baca.— Neither the treaty of 1800 between Spain and France, nor that of 1803 (8 Stat. at L. 200), between France and the United States, ceding "the colony or province of Louisiana," definitely fixed the boundaries of that colony or province. A dispute arose between the United States and Spain on this subject. The United States contended that the Rio Grande river was the western boundary of the territory ceded, but Spain controverted this. After a lengthy correspondence, the differences between the two governments were settled by the treaty of February 22, 1819 (8 Stat. at L. 252), by which the United States acquired East and West Florida, and renounced all its rights, claims, and pretensions to the territories lying west and north of a line beginning at the mouth of the Sabine river and running north and west in the manner described in the treaty.

In the case of *De Baca v. United States*, 37 Ct. Cl. 482, it appears that Sandoval, claimant's decedent, was born of Spanish parents in 1809 in Sante Fé, in the territory of New Mexico (within the territory described above to which the United States renounced all its rights, claims, and pretensions), and continued to reside there until his death in 1862. It was contended by

the claimant that decedent acquired citizenship in the United States under article 3 of the treaty of 1803, between the United States and France, which entitled inhabitants of the ceded territory to "be incorporated in the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." The court held that the disputed territory was not acquired by cession from France, citing in support of that view the provision of article 6 of the treaty of 1819, between the United States and Spain, which provides that the inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty shall be "incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States." "There is no provision in the treaty," says the court, "with reference to the citizenship of the inhabitants in the disputed territory, thus indicating to our minds that such territory had not, up to that time, ceased to be Spanish territory, and for that reason no provision was necessary concerning their citizenship under the Spanish government."

The court's conclusion was that it could not regard these treaties as affecting or changing the citizenship of any person dwelling within the limits of the disputed territory; that Spaniards continued to be Spaniards, and Americans continued to be Americans, and their children were of the citizenship of their parents. The court called attention to the fact that the inhabitants of Santa Fé were universally regarded as Spaniards or Mexicans, until the United States acquired that territory by treaty; and that the treaty of Guadalupe-Hidalgo recognized all of these inhabitants as Mexican citizens, and made provision

for their remaining such or becoming citizens of the United States at their own election.

The decision of the court was that claimant's decedent was born a subject of Spain, and did not become a citizen of the United States until the expiration of the year prescribed by the treaty of Guadalupe-Hidalgo,—that is, one year from the date of the exchange of ratifications of the treaty, which took place May 30, 1848 (9 Stat. at L. 922).

64. Treaty of 1819 with Spain.—The treaty of 1819 (8 Stat. at L. 252), art. 6, with Spain, ceding Florida to the United States, provided that the inhabitants of the ceded territory “shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States.”

In the case of *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L. ed. 242, Chief Justice Marshall said: “This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the government, till Florida shall become a state.”

In *Tannis v. Doe ex dem. St. Cyre*, 21 Ala. 449, it was held by the supreme court of Alabama, in 1852, that a free negro, who was an inhabitant of Florida at the date of the treaty by which Spain ceded that territory to the United States, lost the character of an alien by the operation of that treaty.

65. Treaty of February 2, 1848, with Mexico.—The treaty of Guadalupe-Hidalgo, signed February 2, 1848 (9 Stat. at L.

922), effected a collective naturalization of all (Mexicans) inhabitants of California and other territory ceded by that treaty who remained in and adhered to the United States. Article 8 of the treaty provided that "Mexicans now established in territories previously belonging to Mexico," and which were to "remain for the future within the limits of the United States, as defined by the present treaty," should, if remaining in such territories, elect within a year from the date of the exchange of the ratifications of the treaty whether they would "retain the title and rights of Mexican citizens, or acquire those of citizens of the United States," but that those who remained "in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans," should "be considered to have elected to become citizens of the United States."

The 8th section of the treaty is inapplicable to persons who, before the revolution in Texas, had been citizens of Mexico, and who, by that revolution, had been separated from it. *McKinney v. Saviego*, 18 How. 235, 15 L. ed. 365.

Two claimants, natives of Mexico, who had remained in New Mexico after the ratification of the treaty without having indicated an election to "retain the title and rights of Mexican citizens," complained of acts committed by the authorities of the United States prior to the date of the conclusion of the treaty. It was held by the commissioners, without reference of the question to the umpire, that the claimants in question had no standing as Mexicans before the commission. *Melquiades and Josefa Chavez v. United States*, United States and Mexican Claims Commission, Convention of July 4, 1868, 15 Stat. at L. 679, Moore, International Arbitrations, 2510.

A., a native of Mexico, where he was born in 1833, was taken by his father, in 1851, to California, whither the latter had gone

in March, 1848. It was held by the commissioners that the phrase, "Mexicans now established," as employed in article 8 of the treaty of Guadalupe-Hidalgo, applied only to those who were established in the ceded territories at the date of the conclusion of the treaty, and not to those who came subsequently; and that neither the father, nor consequently the son through him, acquired, under the treaty, the citizenship of the United States. *Jesus M. Ainsa v. Mexico*, United States and Mexican Claims Commission, Convention of July 4, 1868, 15 Stat. at L. 678, Moore, International Arbitrations, 2510.

The Constitution of California of October 1, 1849, art. 2, § 1, provided: "Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Querétaro on the 30th day of May, 1848 [9 Stat. at L. 922], of the age of twenty-one years, who shall have been a resident of the state six months next preceding the day of the election, and of the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law." The commissioners held that neither this article, nor anything in the act of Congress admitting California into the Union, helped claimant's case.

"The umpire considers that the claimant must be considered to be a Mexican citizen, the contrary not having been proved by the defense. The witnesses testify that he was born in Mexico, and it is not shown that he had divested himself of that nationality. The umpire does not think that article 8 of the treaty of Guadalupe-Hidalgo applied to the claimant, though he might have been a resident of Texas at the time of the conclusion of that treaty and for a year afterward. Texas was not, in the meaning of that article, one of the territories previously belong-

ing to Mexico, and which remained for the future within the limits of the United States. Texas had been independent since 1836, and a state of the Union since 1845. It was claimed by the United States that the strip of territory between the rivers Nueces and Bravo was a part of Texas, and had always been so. It must therefore be supposed, nothing to the contrary having been proved, that the claimant was a Mexican citizen residing in Texas." Thornton, Umpire, July 7, 1876, Convention of July 4, 1868, 15 Stat. at L. 678; *Agapito Longoria v. United States*, United States and Mexican Claims Commission, Moore, International Arbitrations, 2510, 2511.

The right of election secured to Mexican citizens of the territory of New Mexico by the treaty with Mexico, to retain their citizenship or to become American citizens, was not required to be exercised in any particular mode, but could be exercised and proved in any manner appropriate to the nature of the case. A declaration of intention by a Mexican citizen to retain Mexican citizenship, by signing his name to a list authorized to be kept by the clerks of the prefects' courts by a proclamation of the military governor of New Mexico, is a sufficient exercise of such right of election, and is not affected by a subsequently declared intention to withdraw such signature, which is not shown to have been acted on. *Quintana v. Tomkins*, 1 N. M. 29.

A declaration of intention to retain Mexican citizenship, made before a probate court, in accordance with the proclamation above referred to, was a binding and valid exercise of the right of election reserved to Mexican residents of the territory of New Mexico by article 8 of the treaty of Guadalupe-Hidalgo (9 Stat. at L. 929). *Carter v. Territory*, 1 N. M. 317.

In the case of *Tobin v. Walkinshaw*, McAll. 186, Fed. Cas. No. 14,070, the United States circuit court held that the prin-

ciple that the allegiance of the inhabitants of territory ceded is transferred with the territory, unless the treaty of cession provides otherwise, applies only to natural-born citizens of the country making the cession. In this case one Forbes, a native of Great Britain, was, at the date of the treaty of Guadalupe-Hidalgo, a naturalized citizen of Mexico. He continued to reside in California after the execution of the treaty, and never made any declaration of intention to retain the rights of a Mexican citizen. It was contended that these facts, with the subsequent admission of California into the Union, fixed at once and by mere operation of law the status of American citizenship upon him. The treaty stipulated, as to those Mexicans who should prefer to remain in the ceded territory, that they might either retain the title and rights of Mexican citizens, or acquire those of American citizens; but declared that they should be under the obligation to make their election within one year from the date of the exchange of the ratification of the treaty, and those who should remain after the expiration of that year, without having declared their intention to retain the character of Mexican citizens, should be considered to have elected to become citizens of the United States. The court said that birth binds man by the tie of natural allegiance to his native soil, and such allegiance gives to the country in which he was born the right to transfer this natural allegiance, subject, however, to the right of election in the party whether he will retain his allegiance to his old sovereign, or pay allegiance to the new. Said the court: "The object of the treaty of Guadalupe-Hidalgo was to regulate the exercise of this right of election by such parties as by the principles of international law were subject to their jurisdiction as contracting parties. The Mexican government stipulated for a right for Mexicans residing in the territory to elect at any time within a year after the date

of the treaty to retain their title and rights as Mexicans; the government of the United States guarded against the abuse of the right, by limiting the time within which it was to be executed, and stipulating that, if the election was not made within the time limited, they should be considered as having elected to become citizens of the United States. The right of the two governments thus to stipulate in relation to native-born Mexicans, under the law of nations, is unquestionable. It was evidently proper that the status of all such should be fixed. If they were neither to continue Mexican citizens, nor become citizens of the United States, a whole people would become disfranchised. They would have no status as citizens, owe no allegiance, and be left in the anomalous position of a people without a country. Not so with the defendant Forbes. So soon as he had been released from the voluntary allegiance to Mexico, he was remitted to his original status. No power existed in one government to transfer, or in the other to receive, the voluntary or statutory allegiance of a naturalized citizen. Neither had the right to say to such, 'You shall continue your allegiance to Mexico, although she has conveyed it away; or you shall become a citizen of the United States.' The allegiance of the naturalized citizen is the offspring of municipal law. Unlike natural allegiance, its support does not rest upon the law of nature and the code of nations. The only relations that Mexico or the United States could change were those arising from those sources. Nor does the language of the treaty authorize the conclusion that the contracting parties intended to include within the word 'Mexicans' naturalized citizens of foreign countries. . . . In the 8th article of the treaty of Guadalupe-Hidalgo, Mexicans are only mentioned as entitled to the rights of election. The whole of this article refers to Mexicans; and the 9th article speaks of 'Mexicans' only, and provides that

those who do not preserve the character of Mexican citizens shall be subsequently incorporated into, and become entitled to all the rights of citizens of, the United States. Naturalized citizens are nowhere included, *eo nomine*, within the provisions of the treaty; and, in the opinion of the court, it was not intended to include them. This construction of the treaty is sought to be defeated by the assumption that the change in the political relations of the inhabitants of the ceded territory was contemplated to be made by the treaty with their consent, by giving to them the right of election; hence, that it is to be reasonably concluded that naturalized citizens were intended to be included in the term 'Mexicans.' The answer is, first, it is a violence to the language of the treaty so to construe it; secondly, the allegiance of the naturalized citizen was not a subject of transfer between the contracting parties; and thirdly, the argument surrenders the whole question; because, if the defendant was included in the treaty, his consent was essential to entitle him to exercise the right of election. . . . But, in the opinion of the court, the election was given only to Mexicans who remained in the ceded territory longer than one year after the date of the treaty, who were, during that interval, to elect to retain Mexican rights, or be considered citizens of the United States. Both governments had the right so to negotiate in regard to Mexicans; but in relation to the defendant Forbes, a naturalized citizen, his voluntary allegiance might be released by Mexico,—not transferred. On his release he was remitted to his original status of a British subject, derived from his birth; and the courts know no principle of law which would authorize the government of the United States to compel the transfer of the defendant's voluntary allegiance from Mexico to themselves. The contracting parties did not intend to do so. The court considering the defendant without the provisions of

the treaty, his claim to be a citizen of the United States under them cannot be sustained; and he stood at the execution of the treaty, and now stands, where his acts and declarations and original status have placed him,—an alien, and subject of Great Britain.”

A subject of a foreign state, residing in the state of Texas at the time of its admission to the Union, did not thereby become a citizen of the United States. *Coutzen v. United States*, 33 Ct. Cl. 475.

A person born in Texas, and removing therefrom before the separation from Mexico, remains a citizen of Mexico, though a minor when the separation took place. *Jones v. McMasters*, 20 How. 8, 15 L. ed. 805.

In the case of *Masson v. Mexico* (American and Mexican Claims Commission, Convention of 1868, 15 Stat. at L. 679) claimant stated that he emigrated from France to the Republic of Texas in 1844, and continued to reside there until the annexation of that Republic to the United States and its incorporation into the Union. He asserted that he thereby became a citizen of the United States. The umpire held that, to have become a citizen of the United States by virtue of the annexation of Texas, the claimant must have first been a citizen of the Republic of Texas, and, as it was not found that he went through the forms required to acquire that citizenship, his claim to American citizenship was not established. Moore, *International Arbitrations*, pp. 2542, 2543.

66. Treaty of December 30, 1853, with Mexico (Gadsden Treaty).—Article 5 of the Gadsden treaty, signed December 30, 1853 (10 Stat. at L. 1031), declared that the provisions of article 8 of the treaty of Guadalupe-Hidalgo (9 Stat. at L. 929), relative to the inhabitants of the ceded territory, should apply to the territory ceded by the Gadsden treaty. The Mexican

inhabitants of the territory referred to (Arizona), who adhered to and remained in the United States, thereby became citizens of the United States.

67. Treaty of 1867 with Russia.— The treaty of 1867 with Russia, ceding Alaska to the United States, gave the inhabitants of the ceded territory the privilege of reserving their Russian allegiance and returning to Russia within three years. It was provided that those remaining there (with the exception of uncivilized native tribes) should be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.

The treaty provision (art. 3) reads as follows: "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but, if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country." 15 Stat. at L. 542.*

*The following report from Moore's International Arbitrations of an interesting case which came before a claims commission to which the United States was a party, is given herewith:

Henriette Levy, widow of Jacob Levy, and a native of Alsace, filed, in her own right, and as tutrix of her six minor children, a memorial before the commission under the treaty between the United States and France of January 15, 1880 (21 Stat. at L. 673), for damages for the seizure of cotton by the United States forces in Louisiana in 1863. The cotton in question belonged to the firm of Isaac Levy & Co., then doing business in Louisiana. This firm was composed of Jacob Levy and Isaac Levy, citizens of France, and Marx Levy and Benjamin Weil, citizens of the United States. In 1866 Jacob Levy purchased the interests of Marx Levy and Benjamin Weil in the

68. Treaty of 1898 with Spain.— The treaty of Paris of December 10, 1898 (30 Stat. at L. 1754), which terminated the late war between the United States and Spain, and by which Spain ceded Porto Rico and the Philippine islands to the United States, provided (art. 9) that Spanish subjects, natives of the Peninsula, residing in the territory ceded, might preserve their allegiance to Spain by making, before a court of record, within a year from the date of the exchange of ratifications of the said treaty, a declaration of their decision to preserve such allegiance. The treaty declared that, in default of such declaration, they

property and assets of the firm, and subsequently removed to Strasburg, in Alsace, then in the jurisdiction of France, where he died March 1, 1871. The memorial filed by Henriette Levy embraced both the original and the acquired interest of Jacob Levy in the property and assets of the firm.

On this state of facts, counsel for the United States demurred to the memorial on the following grounds: "1. As to the whole case: That it appears that the claimant and her children, about the year 1871, became citizens or subjects of Germany, and have ever since remained, and are now, such citizens or subjects, and have not, since that year, been citizens of the Republic of France, and that this claim is therefore not presented by or on behalf of the citizens of that Republic. 2. As to the interest alleged to have been assigned by Benjamin Weil: That, as it appears that said Weil was, at the time of the acts complained of, a citizen of the United States, the claim is not one arising out of acts committed against the persons or property of citizens of France."

In support of so much of the demurrer as related to the claim derived from Benjamin Weil, counsel for the United States referred to the case of Archbishop Perché.

In support of the demurrer to the whole case, counsel for the United States invoked the treaty of Frankfort of May 10, 1871, by which Alsace was ceded to Germany. By article 2 of this treaty it was provided that French subjects, born in the ceded territory and actually domiciled therein, who desired to preserve their French nationality, should be allowed till October 1, 1872, to declare their intention to do so, before competent authority, and to remove their domicile to France.

As there was no allegation in the memorial that Henriette Levy had availed herself of this privilege, counsel for the United States maintained that it was a reasonable presumption that she had omitted to do so, and had, in consequence, become a German subject. Counsel cited in this rela-

should be held to have renounced such allegiance, and to have adopted the nationality of the territory in which they resided.

The treaty (art. 9) further provided that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

It will be observed that this treaty, unlike previous treaties of cession to which the United States has been a party, makes no provision for the incorporation of the inhabitants of the ceded territory as citizens of the United States. It expressly declares that the civil rights and political status of the native inhabitants shall be determined by the Congress.

tion the case of Archbishop Perch , and moved that the memorialist be required to amend her memorial and state whether she had availed herself of the privilege secured by article 2 of the treaty of Frankfort. He further moved that, in default of such a statement, the case be dismissed.

Special counsel for the memorialist contended (1) that the case was not analogous to that of Archbishop Perch , since in that case the claimant had voluntarily renounced his allegiance to France and become a citizen of the United States, while Jacob Levy, the husband of Henriette Levy, was born in France, lived in France, and died a citizen of France, and (2) that, as Jacob Levy was a citizen of France when the loss was sustained, and continued to be a citizen of France during his life, the claim was by a citizen of France, and that the commission should take and maintain jurisdiction. In support of this position the 1st, 2d, and 4th articles of the treaty were quoted. The attention of the commission was also called to the 7th article of the treaty of February 23, 1853 (10 Stat. at L. 996), between France and the United States, in which it is provided that "Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they may please, either gratuitously or for value received, by donation, testament, or otherwise, just as those citizens themselves; and in no case shall they be subject to taxes on transfer, inheritance, or any others different from those paid by the latter."

It was also contended that any change in the nationality of the country of their nativity could not affect the rights acquired by the heirs of Jacob Levy while the country was an integral part of France and they were citizens thereof; that the repeal of a law, or change of a treaty, or a cession of territorial domain subsequent to the date when the right of inheritance attached, could not affect any right acquired under the treaty, or such law

The contention was advanced by those who were opposed to the acquisition of Porto Rico and the Philippine islands, that the United States has no power, in acquiring and governing territory, to provide against the incorporation of the inhabitants of the acquired territory as citizens of the United States. They contended that the inhabitants of the territory ceded to the United States by Spain became, immediately upon annexation, citizens of the United States.

The Supreme Court of the United States, in the *Insular Cases*, 182 U. S. 1-391, 45 L. ed. 1041-1146, 21 Sup. Ct.

or cession of territory. Several authorities were cited in the brief in support of these positions, and especially the decision of the Supreme Court of the United States in the case of *Dawson v. Godfrey*, 4 Cranch, 321, 2 L. ed. 634. It was also claimed by counsel for the memorialist that the nationality of the father was transmitted to his minor children; that neither the mother nor guardian could change it during their minority; that, when the minors attained their majority, they had the right to elect whether they would adhere to the country to which their father owed allegiance at the date of his death, and that until that period arrived they continued citizens of France. The cession of Alsace, it was alleged, did not affect in any particular the private rights of the citizens to property, or claims for injuries committed prior to the cession.

Counsel for the United States, in reply to the contention of private counsel that there was no analogy between the case of *Perché* and the case at bar, maintained that the question for the commission to consider was one solely of the fact of citizenship; that the motive, or reason, or the attending circumstances, in the case of a change of nationality, ought not to be considered, and could properly have no weight; that, assuming the position of counsel for the claimant to be a tenable one, it was true that she had the option tendered to her by the treaty of 1871; but that she was then called upon to make her choice, either to remain in Germany and become a subject of the German Empire, or to accept the privileges of the treaty and retain her citizenship in France. She chose to remain in the German Empire, and thus voluntarily fixed her character as a German subject.

The commission sustained the demurrer in these words: "The commission, in this case, judges well-founded, and admits, the demurrer interposed by the agent of the United States to the claim or memorial. In its opinion, it is beyond doubt that the claimant and her children, being natives of Alsace, and having always resided there, and not having made choice of the French nationality during the interim granted by the treaty of May 10th, 1871 (which applied to persons of full age as well as to minors), are in-

Rep. 742-827, declared, however, that this government in acquiring territory has power to prescribe the terms upon which it will receive the inhabitants; and, in the concurring opinion of Justices White, Shiras, and McKenna, it was held that where a treaty of cession contains provisions against the incorporation of the inhabitants as citizens, incorporation does not take place until, in the wisdom of Congress, it is deemed that the acquired territory has reached a condition where it is proper that it should enter into and form a part of the American family.

cluded in the collective naturalization, real as well as personal, which resulted to that country in consequence of its annexation to the German Empire, sanctioned by that treaty. And as German subjects, which they have become, they cannot in any manner have recourse to a commission created solely for the settlement of certain claims of French or American citizens. The French nationality of Jacob Levy, whose rights the claimant and her children have inherited, cannot be included in this inheritance. Possessed by him alone, it does not satisfy the requirements of the convention, which demands French nationality in those who actually present themselves before the commission. Benjamin Weil and Marx Levy never having been French, the rights which they transferred to Jacob Levy cannot, *a fortiori*, be taken into consideration, nor can they render any better the legal condition of the claimant and her children. For these reasons the commission sustains the demurrer of the United States counsel and declares the claim outside its jurisdiction.'

The judgment of the commission sustaining the demurrer was dated the 25th of June, 1881. The 20th of September, 1881, the claimant, by her attorney, filed an amendment to the memorial, in which she declared that she and her minor children were then residents and citizens of France, and that her postoffice address at that time was in Paris, France. Documentary evidence was also produced, showing that Henriette Levy, the claimant, was, upon a proper application to the authorities of France, reinstated as a French subject on the 3d of June, 1882.

Counsel for the United States maintained that the amendment was, in effect, an admission that Henriette Levy and her minor children were subjects of Germany at the time the treaty was ratified, and that citizenship in France, acquired after the date of the treaty, could not give jurisdiction to the commission over parties so acquiring citizenship.

The case was dismissed finally for want of jurisdiction.

Boutwell's Report, 65, French and American Claims Commission, Convention of January 15, 1880, 21 Stat. at L. 673; Moore, International Arbitrations, 2514 *et seq.*

The pertinent parts of the opinion of the court (*Downes v. Bidwell*, 181 U. S. 244, 45 L. ed. 1088, 21 Sup. Ct. Rep. 770) are here quoted:

"We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their status shall be in what Chief Justice Marshall termed the 'American empire.' There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges, and immunities of citizens. If such be their status, the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions, and modes of life, shall become at once citizens of the United States. In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that 'the inhabitants shall be incorporated into the Union of the United States and admitted as soon as possible . . . to the enjoyment of all the rights, advantages, and immunities of citizens of the United States;' in the case of Mexico, that they should 'be incorporated into the Union, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States;' in the case of Alaska, that the inhabitants who remained three years, 'with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights,' etc.; and in the case of Porto Rico and the Philippines, 'that the civil rights and political status of the native inhabitants

. . . shall be determined by Congress.' In all these cases there is an implied denial of the right of the inhabitants to American citizenship until Congress by further action shall signify its assent thereto.

"Grave apprehensions of danger are felt by many eminent men,—a fear lest an unrestrained possession of power on the part of Congress may lead to unjust and oppressive legislation in which the natural rights of territories, or their inhabitants, may be engulfed in a centralized despotism. These fears, however, find no justification in the action of Congress in the past century, nor in the conduct of the British Parliament towards its outlying possessions since the American Revolution.

"In *Johnson v. M'Intosh*, 8 Wheat. 543, 589, 5 L. ed. 681, 692, it was said by Chief Justice Marshall: 'The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually they are incorporated with the victorious nation and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old; and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers. When the conquest is complete, and the conquered inhabitants

can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame and hazard to his power.'

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"It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race, habits, laws, and customs of the people, and from differences of soil, climate, and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of native Indians.

"We suggest, without intending to decide, that there may be a distinction between certain natural rights enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinions and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law, and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage (*Minor v. Happersett*, 21 Wall. 162, 22 L. ed. 627), and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the states to be unnecessary to the proper protection of individuals.

“Whatever may be finally decided by the American people as to the status of these islands and their inhabitants,—whether they shall be introduced into the sisterhood of states, or be permitted to form independent governments,—it does not follow that, in the meantime, awaiting that decision, the people are, in the matter of personal rights, unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled, under the principles of the Constitution, to be protected in life, liberty, and property. This has been frequently held by this court in respect to the Chinese, even when aliens, not possessed of the political rights of citizens of the United States. *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064; *Fong Yue Ting v. United States*, 149 U. S. 698, 37 L. ed. 905, 13 Sup. Ct. Rep. 1016; *Lem Moon Sing v. United States*, 158 U. S. 538, 547, 39 L. ed. 1082, 1085, 15 Sup. Ct. Rep. 962, 967; *Wong Wing v. United States*, 163 U. S. 228, 41 L. ed. 140, 16 Sup. Ct. Rep. 977. We do not desire, however, to anticipate the difficulties which would naturally arise in this connection, but merely to disclaim any intention to hold that the inhabitants of these territories are subject to an unrestrained power on the part of Congress to deal with them upon the theory that they have no rights which it is bound to respect.

“Large powers must necessarily be intrusted to Congress in dealing with these problems, and we are bound to assume that they will be judiciously exercised. That these powers may be abused is possible. But the same may be said of its powers under the Constitution as well as outside of it. Human wisdom has never devised a form of government so perfect that it may not be perverted to bad purposes. It is never conclusive to argue against the possession of certain powers from possible abuses of them. It is safe to say that if Congress should venture upon legislation manifestly dictated by selfish interests, it

would receive quick rebuke at the hands of the people. Indeed, it is scarcely possible that Congress could do a greater injustice to these islands than would be involved in holding that it could not impose upon the states taxes and excises without extending the same taxes to them. Such requirement would bring them at once within our internal revenue system, including stamps, licenses, excises, and all the paraphernalia of that system, and apply it to territories which have had no experience of this kind, and where it would prove an intolerable burden.

“This subject was carefully considered by the Senate committee in charge of the Foraker bill, which found, after an examination of the facts, that property in Porto Rico was already burdened with a private debt amounting, probably, to \$30,000,000; that no system of property taxation was or ever had been in force in the island, and that it probably would require two years to inaugurate one and secure returns from it; that the revenues had always been chiefly raised by duties on imports and exports, and that our internal revenue laws, if applied in that island, would prove oppressive and ruinous to many people and interests; that to undertake to collect our heavy internal revenue tax, far heavier than Spain ever imposed upon their products and vocations, would be to invite violations of the law so innumerable as to make prosecutions impossible, and to almost certainly alienate and destroy the friendship and good will of that people for the United States.

“In passing upon the questions involved in this case and kindred cases, we ought not to overlook the fact that, while the Constitution was intended to establish a permanent form of government for the states which should elect to take advantage of its conditions, and continue for an indefinite future, the vast possibilities of that future could never have entered the minds of its framers. The states had but recently emerged from a war with

one of the most powerful nations of Europe, were disheartened by the failure of the confederacy, and were doubtful as to the feasibility of a stronger union. Their territory was confined to a narrow strip of land on the Atlantic coast from Canada to Florida, with a somewhat indefinite claim to territory beyond the Alleghanies, where their sovereignty was disputed by tribes of hostile Indians supported, as was popularly believed, by the British, who had never formally delivered possession under the treaty of peace. The vast territory beyond the Mississippi, which formerly had been claimed by France, since 1762 had belonged to Spain, still a powerful nation and the owner of a great part of the Western Hemisphere. Under these circumstances it is little wonder that the question of annexing these territories was not made a subject of debate. The difficulties of bringing about a union of the states were so great, the objections to it seemed so formidable, that the whole thought of the convention centered upon surmounting these obstacles. The question of territories was dismissed with a single clause, apparently applicable only to the territories then existing, giving Congress the power to govern and dispose of them.

“Had the acquisition of other territories been contemplated as a possibility, could it have been foreseen that, within little more than one hundred years, we were destined to acquire, not only the whole vast region between the Atlantic and Pacific oceans, but the Russian possessions in America and distant islands in the Pacific, it is incredible that no provision should have been made for them, and the question whether the Constitution should or should not extend to them have been definitely settled. If it be once conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories

acquired by them. If, in limiting the power which Congress was to exercise within the United States, it was also intended to limit it with regard to such territories as the people of the United States should thereafter acquire, such limitations should have been expressed. Instead of that, we find the Constitution speaking only to states, except in the territorial clause, which is absolute in its terms, and suggestive of no limitations upon the power of Congress in dealing with them. The states could only delegate to Congress such powers as they themselves possessed, and as they had no power to acquire new territory they had none to delegate in that connection. The logical inference from this is that, if Congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions. If, upon the other hand, we assume that the territorial clause of the Constitution was not intended to be restricted to such territory as the United States then possessed, there is nothing in the Constitution to indicate that the power of Congress in dealing with them was intended to be restricted by any of the other provisions.

“There is a provision that ‘new states may be admitted by the Congress into this Union.’ These words, of course, carry the Constitution with them, but nothing is said regarding the acquisition of new territories or the extension of the Constitution over them. The liberality of Congress in legislating the Constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its own force, but there is nothing in the Constitution itself, and little in the interpretation put upon it, to confirm that impression. There is not even an analogy to the provisions of an ordinary mortgage, for its attachment to after-acquired property, without which it covers only property existing at the date of the mortgage. In short, there is absolute silence upon the subject. The executive

and legislative departments of the government have for more than a century interpreted this silence as precluding the idea that the Constitution attached to these territories as soon as acquired, and unless such interpretation be manifestly contrary to the letter or spirit of the Constitution, it should be followed by the judicial department. *Cooley*, Const. Lim. §§ 81-85; *Burrow-Giles Lithographic Co. v. Sarony*, 111 U. S. 53, 57, 28 L. ed. 349, 351, 4 Sup. Ct. Rep. 279; *Marshall Field & Co. v. Clark*, 143 U. S. 649, 691, 36 L. ed. 294, 309, 12 Sup. Ct. Rep. 495.

“Patriotic and intelligent men may differ widely as to the desirableness of this or that acquisition, but this is solely a political question. We can only consider this aspect of the case so far as to say that no construction of the Constitution should be adopted which would prevent Congress from considering each case upon its merits, unless the language of the instrument imperatively demand it. A false step at this time might be fatal to the development of what Chief Justice Marshall called the American empire. Choice in some cases, the natural gravitation of small bodies towards large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant possessions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that ultimately our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action.”

In their concurring opinion in the same case (182 U. S. 300,

45 L. ed. 1106, 21 Sup. Ct. Rep. 770), Justices White, Shiras, and McKenna said:

"It may not be doubted that, by the general principles of the law of nations, every government which is sovereign within its sphere of action possesses as an inherent attribute the power to acquire territory by discovery, by agreement or treaty, and by conquest. It cannot also be gainsaid that, as a general rule, wherever a government acquires territory as a result of any of the modes above stated, the relation of the territory to the new government is to be determined by the acquiring power in the absence of stipulations upon the subject. These general principles of the law of nations are thus stated by Halleck in his treatise on International Law, page 126: 'A state may acquire property or domain in various ways; its title may be acquired originally by mere occupancy, and confirmed by the presumption arising from the lapse of time; or by discovery and lawful possession; or by conquest, confirmed by treaty or tacit consent; or by grant, cession, purchase, or exchange; in fine, by any of the recognized modes by which private property is acquired by individuals. It is not our object to enter into any general discussion of these several modes of acquisition, any further than may be necessary to distinguish the character of certain rights of property which are the peculiar objects of international jurisprudence. Wheaton, International Law, pt. 2, chap. 4, §§ 1, 4, 5; 1 Phillimore, International Law, §§ 222-276; Grotius, de Jur. Belli ac Pacis, lib. 2, chap. 4; Vattel, Droit des Gens, liv. 2, chaps. 7, 11; Rutherford, Inst. of Natural Law, b. 1, chap. 3, b. 2, chap. 9; Puffendorf, de Jur. Nat. et Gent. lib. 4, chaps. 4-6; Moser, Versuch, etc., b. 5, chap. 9; Martens, Précis du Droit des Gens, §§ 35 *et seq.*; Schmaltz, Droit des Gens, liv. 4, chap. 1; Klüber, Droit des Gens, §§ 125, 126; Heffter, Droit International, § 76; Ortolan, Domaine International,

§§ 53 *et seq.*; Bowyer, Universal Public Law, chap. 28; Bello, Derecho Internacional, pt. 1, chap. 4; Riquelme, Derecho Pub. Int. lib. 1, title 1, chap. 2; Burlamaqui, Droit de la Nat. et des Gens, tome 4, pt. 3, chap. 5.'

"Speaking of a change of sovereignty, Halleck says (pp. 76, 814): 'Chap. 3, § 23. The sovereignty of a state may be lost in various ways. It may be vanquished by a foreign power, and become incorporated into the conquering state as a province or as one of its component parts; or it may voluntarily unite itself with another in such a way that its independent existence as a state will entirely cease.'

"Chap. 33, § 3. If the hostile nation be subdued and the entire state conquered, a question arises as to the manner in which the conqueror may treat it without transgressing the just bounds established by the rights of conquest. If he simply replaces the former sovereign, and, on the submission of the people, governs them according to the laws of the state, they can have no cause of complaint. Again, if he incorporates them with his former states, giving to them the rights, privileges, and immunities of his own subjects, he does for them all that is due from a humane and equitable conqueror to his vanquished foes. But if the conquered are a fierce, savage, and restless people, he may, according to the degree of their indocility, govern them with a tighter rein, so as to curb their "impetuosity, and to keep them under subjection." Moreover, the rights of conquest may, in certain cases, justify him in imposing a tribute or other burthen, either a compensation for the expenses of the war or as a punishment for the injustice he has suffered from them. . . . Vattel, Droit des Gens, liv. 3, chap. 13, § 201; Curtius History, etc., liv. 7, chap. 8; Grotius, de Jur. Bel. ac Pac. lib. 3, chaps. 8, 15; Puffendorf, de Jur. Nat. et Gent. lib. 8, chap. 6,

§ 24; Real, Science du Gouvernement, tome 5, chap. 2, § 5; Heffter, Droit International, § 124; Abegg, Untersuchungen, etc., p. 86.'

"In *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L. ed. 242, the general doctrine was thus summarized in the opinion delivered by Mr. Chief Justice Marshall (p. 542, L. ed. p. 255): 'If it [conquered territory] be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose.'

"When our forefathers threw off their allegiance to Great Britain and established a republican government, assuredly they deemed that the nation which they called into being was endowed with those general powers to acquire territory which all independent governments in virtue of their sovereignty enjoyed. This is demonstrated by the concluding paragraph of the Declaration of Independence, which reads as follows: 'As free and independent states, they [the United States of America] have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do.'

"That under the Confederation it was considered that the government of the United States had authority to acquire territory like any other sovereignty is clearly established by the 11th of the Articles of Confederation.

"The decisions of this court leave no room for question that, under the Constitution, the government of the United States, in virtue of its sovereignty, supreme within the sphere of its delegated power, has the full right to acquire territory enjoyed by every other sovereign nation.

"In *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L.

ed. 242, the court, by Mr. Chief Justice Marshall, said (p. 542, L. ed. p. 255): 'The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.'

"In *United States v. Huckabee* (1872) 16 Wall. 414, 21 L. ed. 457, the court, speaking through Mr. Justice Clifford, said (p. 434, L. ed. p. 464): "Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined; but if the nation is entirely subdued, or in case it be destroyed and ceases to exist, the right of occupation becomes permanent, and the title vests absolutely in the conqueror. *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L. ed. 242; *30 Hogsheads of Sugar v. Boyle*, 9 Cranch, 195, 3 L. ed. 702; *Shanks v. Dupont*, 3 Pet. 246, 7 L. ed. 668; *United States v. Rice*, 4 Wheat. 254, 4 L. ed. 564; *The Amy Warwick*, 2 Sprague, 143, Fed. Cas. No. 342; *Johnson v. McIntosh*, 8 Wheat. 588, 5 L. ed. 692. Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government; or, in other words, the conqueror, by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy nation or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights of the conquered state, including even debts as well as personal and real property. Halleck, *International Law*, 839; *Elphinstone v. Bedreechund*, 1 Knapp P. C. C. 329; Vattel, 365; 3 Phillimore, *International Law*, 505.'

"In *Church of Jesus Christ of L. D. S. v. United States* (1889) 136 U. S. 1, 34 L. ed. 478, 10 Sup. Ct. Rep. 792, Mr.

Justice Bradley, announcing the opinion of the court, declared (p. 42, L. ed. p. 491, Sup. Ct. Rep. p. 802): 'The power to acquire territory, other than the territory northwest of the Ohio river (which belonged to the United States at the adoption of the Constitution), is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty, and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the territories west of the Rocky mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the government, in its diplomatic negotiations, had seen fit to accept relating to the rights of the people then inhabiting those territories.'

"Indeed, it is superfluous to cite authorities establishing the right of the government of the United States to acquire territory, in view of the possession of the Northwest Territory when the Constitution was framed and the cessions to the general government by various states subsequent to the adoption of the Constitution, and in view, also, of the vast extension of the territory of the United States brought about since the existence of the Constitution by substantially every form of acquisition known to the law of nations. Thus, in part at least, 'the title of the United States to Oregon was founded upon original discovery and actual settlement by citizens of the United States, authorized or approved by the government of the United States.' *Shively v. Bowlby*, 152 U. S. 50, 38 L. ed. 349, 14 Sup. Ct. Rep. 566. The province of Louisiana was ceded by France in 1803 [8 Stat. at L. 202]; the Floridas were transferred by Spain in 1819 [8 Stat. at L. 252]; Texas was admitted into the

Union by compact with Congress in 1845 [9 Stat. at L. 108]; California and New Mexico were acquired by the treaty with Mexico of 1848 [9 Stat. at L. 922]; and other western territory from Mexico by the treaty of 1853 [10 Stat. at L. 1031]; numerous islands have been brought within the dominion of the United States under the authority of the act of August 18, 1856 [11 Stat. at L. 119], chap. 164, usually designated as the Guano islands act, re-enacted in Revised Statutes, §§ 5570-5578 [U. S. Comp. Stat. 1901, pp. 3739-3741]; Alaska was ceded by Russia in 1867 [15 Stat. at L. 539]; Midway island, the western end of the Hawaiian group, 1,200 miles from Honolulu, was acquired in 1867, and \$50,000 was expended in efforts to make it a naval station; on the renewal of a treaty with Hawaii November 9, 1887 [25 Stat. at L. 1399], Pearl harbor was leased for a permanent naval station; by joint resolution of Congress the Hawaiian islands came under the sovereignty of the United States in 1898 [30 Stat. at L. 750]; and on April 30, 1900, an act [31 Stat. at L. 141, chap. 339] for the government of Hawaii was approved, by which the Hawaiian islands were given the status of an incorporated territory; on May 21, 1890, there was proclaimed by the President an agreement, concluded and signed with Germany and Great Britain, for the joint administration of the Samoan islands [26 Stat. at L. 1497]; and on February 16, 1900 [31 Stat. at L. 1878], there was proclaimed a convention between the United States, Germany, and Great Britain, by which Germany and Great Britain renounced in favor of the United States all their rights and claims over and in respect to the island of Tutuila and all other islands of the Samoan group east of longitude 171° west of Greenwich. And finally the treaty with Spain which terminated the recent war was ratified.

"It is worthy of remark that, beginning in the administration

of President Jefferson, the acquisitions of foreign territory above referred to were largely made while that political party was in power which announced as its fundamental tenet the duty of strictly construing the Constitution, and it is true to say that all shades of political opinion have admitted the power to acquire and lent their aid to its accomplishment. And the power has been asserted in instances where it has not been exercised. Thus, during the administration of President Pierce, in 1854, a draft of a treaty for the annexation of Hawaii was agreed upon, but, owing to the death of the King of the Hawaiian islands, was not executed. The 2d article of the proposed treaty provided as follows (Ex. Doc. Senate, 55th Congress, 2d session, Report No. 681, Calendar, No. 747, p. 91) :

“ ‘Article 2. The Kingdom of the Hawaiian islands shall be incorporated into the American Union as a state, enjoying the same degree of sovereignty as other states, and admitted as such as soon as it can be done in consistency with the principles and requirements of the Federal Constitution, to all the rights, privileges, and immunities of a state as aforesaid, on a perfect equality with the other states of the Union.’

“It is insisted, however, conceding the right of the government of the United States to acquire territory, as all such territory when acquired becomes absolutely incorporated into the United States, every provision of the Constitution which would apply under that situation is controlling in such acquired territory. This, however, is but to admit the power to acquire, and immediately to deny its beneficial existence.

“The general principle of the law of nations, already stated, is that acquired territory, in the absence of agreement to the contrary, will bear such relation to the acquiring government as may be by it determined. To concede to the government of the United States the right to acquire, and to strip it of all power

to protect the birthright of its own citizens and to provide for the well-being of the acquired territory by such enactments as may, in view of its condition, be essential, is, in effect, to say that the United States is helpless in the family of nations, and does not possess that authority which has at all times been treated as an incident of the right to acquire. Let me illustrate the accuracy of this statement. Take a case of discovery. Citizens of the United States discover an unknown island, peopled with an uncivilized race, yet rich in soil, and valuable to the United States for commercial and strategic reasons. Clearly, by the law of nations, the right to ratify such acquisition and thus to acquire the territory would pertain to the government of the United States. *Johnson v. M'Intosh*, 8 Wheat. 543, 595, 5 L. ed. 681, 694; *Martin v. Waddell*, 16 Pet. 367, 409, 10 L. ed. 997, 1012; *Jones v. United States*, 137 U. S. 202, 212, 34 L. ed. 691, 695, 11 Sup. Ct. Rep. 80; *Shively v. Bowlby*, 152 U. S. 1, 50, 38 L. ed. 331, 349, 14 Sup. Ct. Rep. 548. Can it be denied that such right could not be practically exercised if the result would be to endow the inhabitants with citizenship of the United States and to subject them, not only to local, but also to an equal proportion of national, taxes, even although the consequence would be to entail ruin on the discovered territory, and to inflict grave detriment on the United States, to arise both from the dislocation of its fiscal system and the immediate bestowal of citizenship on those absolutely unfit to receive it?

"The practice of the government has been otherwise. As early as 1856 Congress enacted the Guano islands act, heretofore referred to, which by § 1 provided that when any citizen of the United States shall 'discover a deposit of guano on any island, rock, or key not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and shall take peaceable possession thereof, and occupy

the same, said island, rock, or key may, at the discretion of the President of the United States, be considered as appertaining to the United States.' 11 Stat. at L. 119, chap. 164; Rev. Stat. § 5570 [U. S. Comp. Stat. 1901, p. 3739]. Under the act referred to, it was stated, in argument, that the government now holds and protects American citizens in the occupation of some seventy islands. The statute came under consideration in *Jones v. United States*, 137 U. S. 202, 34 L. ed. 691, 11 Sup. Ct. Rep. 80, where the question was whether or not the act was valid, and it was decided that the act was a lawful exercise of power, and that islands thus acquired were 'appurtenant' to the United States. The court, in the course of the opinion, speaking through Mr. Justice Gray, said (p. 212, L. ed. p. 695, Sup. Ct. Rep. p. 83): 'By the law of nations, recognized by all civilized states, dominion of new territory may be acquired by discovery and occupation, as well as by cession or conquest; and when citizens or subjects of one nation, in its name and by its authority or with its assent, take and hold actual, continuous, and useful possession (although only for the purpose of carrying on a particular business, such as catching and curing fish or working mines) of territory unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired. This principle affords ample warrant for the legislation of Congress concerning guano islands. . . .'

"And these considerations concerning discovery are equally applicable to ownership resulting from conquest. A just war is declared, and in its prosecution the territory of the enemy is invaded and occupied. Would not the war, even if waged successfully, be fraught with danger if the effect of occupation was to necessarily incorporate an alien and hostile people into the United States? Take another illustration. Suppose at the

termination of a war the hostile government had been overthrown, and the entire territory or a portion thereof was occupied by the United States, and there was no government to treat with or none willing to cede by treaty, and thus it became necessary for the United States to hold the conquered country for an indefinite period, or at least until such time as Congress deemed that it should be either released or retained because it was apt for incorporation into the United States. If holding was to have the effect which is now claimed for it, would not the exercise of judgment respecting the retention be so fraught with danger to the American people that it could not be safely exercised?

“Yet again. Suppose the United States, in consequence of outrages perpetrated upon its citizens, was obliged to move its armies or send its fleets to obtain redress, and it came to pass that an expensive war resulted and culminated in the occupation of a portion of the territory of the enemy, and that the retention of such territory—an event illustrated by examples in history—could alone enable the United States to recover the pecuniary loss it had suffered. And suppose, further, that to do so would require occupation for an indefinite period, dependent upon whether or not payment was made of the required indemnity. It being true that incorporation must necessarily follow the retention of the territory, it would result that the United States must abandon all hope of recouping itself for the loss suffered by the unjust war, and hence the whole burden would be entailed upon the people of the United States. This would be a necessary consequence, because if the United States did not hold the territory as security for the needed indemnity it could not collect such indemnity, and, on the other hand, if incorporation must follow from holding the territory the uniformity provision of the Constitution would prevent the assessment of the cost of

the war solely upon the newly acquired country. In this, as in the case of discovery, the traditions and practices of the government demonstrate the unsoundness of the contention. Congress on May 13, 1846, declared that war existed with Mexico. [9 Stat. at L. 9, chap. 16.] In the summer of that year New Mexico and California were subdued by the American arms, and the military occupation which followed continued until after the treaty of peace was ratified, in May, 1848. [9 Stat. at L. 922.] Tampico, a Mexican port, was occupied by our forces on November 15, 1846, and possession was not surrendered until after the ratification. In the spring of 1847 President Polk, through the Secretary of the Treasury, prepared a tariff of duties on imports and tonnage which was put in force in the conquered country. 1 Senate Documents, First Session, 30th Congress, pp. 562, 569. By this tariff, duties were laid as well on merchandise exported from the United States as from other countries, except as to supplies for our army, and on May 10, 1847, an exemption from tonnage duties was accorded to 'all vessels chartered by the United States to convey supplies of any and all descriptions to our army and navy, and actually laden with supplies.' Id. 583. An interesting debate respecting the constitutionality of this action of the President is contained in 18 Cong. Globe, 1st Session, 30th Congress, at pp. 478, 479, 484-489, 495, 498, etc.

"In *Fleming v. Page*, 9 How. 603, 13 L. ed. 276, it was held that the revenue officials properly treated Tampico as a port of a foreign country during the occupation by the military forces of the United States, and that duties on imports into the United States from Tampico were lawfully levied under the general tariff act of 1846. [9 Stat. at L. 42, chap. 74.] Thus, although Tampico was in the possession of the United States, and the court expressly held that in an international sense the port was a part of the territory of the United States, yet it was de-

cided that in the sense of the revenue laws Tampico was a foreign country. The special tariff act promulgated by President Polk was in force in New Mexico and California until after notice was received of the ratification of the treaty of peace [9 Stat. at L. 922]. In *Cross v. Harrison*, 16 How. 164, 14 L. ed. 889, certain collections of impost duties on goods brought from foreign countries into California prior to the time when official notification had been received in California that the treaty of cession had been ratified, as well as impost duties levied after the receipt of such notice, were called in question. The duties collected prior to the receipt of notice were laid at the rate fixed by the tariff promulgated by the President; those laid after the notification conformed to the general tariff laws of the United States. The court decided that all the duties collected were valid. The court undoubtedly in the course of its opinion said that immediately upon the ratification of the treaty California became a part of the United States and subject to its revenue laws. However, the opinion pointedly referred to a letter of the Secretary of the Treasury directing the enforcement of the tariff laws of the United States, upon the express ground that Congress had enacted laws which recognized the treaty of cession. Besides, the decision was expressly placed upon the conditions of the treaty, and it was stated, in so many words, that a different rule would have been applied had the stipulations in the treaty been of a different character.

“But, it is argued, all the instances previously referred to may be conceded, for they but illustrate the rule *inter arma silent leges*. Hence, they do not apply to acts done after the cessation of hostilities, when a treaty of peace has been concluded. This not only begs the question, but also embodies a fallacy. A case has been supposed in which it was impossible to make a treaty because of the unwillingness or disappearance

of the hostile government, and therefore the occupation necessarily continued, although actual war had ceased. The fallacy lies in admitting the right to exercise the power, if only it is exerted by the military arm of the government, but denying it wherever the civil power comes in to regulate and make the conditions more in accord with the spirit of our free institutions. Why it can be thought, although under the Constitution the military arm of the government is in effect the creature of Congress, that such arm may exercise a power without violating the Constitution, and yet Congress—the creator—may not regulate, I fail to comprehend.

“This further argument, however, is advanced. Granting that Congress may regulate without incorporating, where the military arm has taken possession of foreign territory, and where there has been or can be no treaty, this does not concern the decision of this case, since there is here involved no regulation, but an actual cession to the United States of territory by treaty. The general rule of the law of nations, by which the acquiring government fixes the status of acquired territory, it is urged, does not apply to the government of the United States, because it is incompatible with the Constitution that that government should hold territory under a cession and administer it as a dependency without its becoming incorporated. This claim, I have previously said, rests on the erroneous assumption that the United States under the Constitution is stripped of those powers which are absolutely inherent in and essential to national existence. The certainty of this is illustrated by the examples already made use of in the supposed cases of discovery and conquest.

“If the authority by treaty is limited as is suggested, then it will be impossible to terminate a successful war by acquiring territory through a treaty, without immediately incorporating

such territory into the United States. Let me, however, eliminate the case of war, and consider the treaty-making power as subserving the purposes of the peaceful evolution of national life. Suppose the necessity of acquiring a naval station or a coaling station on an island inhabited with people utterly unfit for American citizenship and totally incapable of bearing their proportionate burden of the national expense. Could such island, under the rule which is now insisted upon, be taken? Suppose, again, the acquisition of territory for an interoceanic canal, where an inhabited strip of land on either side is essential to the United States for the preservation of the work. Can it be denied that, if the requirements of the Constitution as to taxation are to immediately control, it might be impossible by treaty to accomplish the desired result?

“While no particular provision of the Constitution is referred to, to sustain the argument that it is impossible to acquire territory by treaty without immediate and absolute incorporation, it is said that the spirit of the Constitution excludes the conception of property or dependencies possessed by the United States and which are not so completely incorporated as to be in all respects a part of the United States; that the theory upon which the Constitution proceeds is that of confederated and independent states, and that no territory, therefore, can be acquired which does not contemplate statehood, and excludes the acquisition of any territory which is not in a position to be treated as an integral part of the United States. But this reasoning is based on political, and not judicial, considerations. Conceding that the conception upon which the Constitution proceeds is that no territory, as a general rule, should be acquired unless the territory may reasonably be expected to be worthy of statehood, the determination of when such blessing is to be bestowed is wholly a political question, and the aid of the judiciary cannot be in-

voked to usurp political discretion in order to save the Constitution from imaginary, or even real, dangers. The Constitution may not be saved by destroying its fundamental limitations.

“Let me come, however, to a consideration of the express powers which are conferred by the Constitution, to show how unwarranted is the principle of immediate incorporation, which is here so strenuously insisted on. In doing so it is conceded at once that the true rule of construction is not to consider one provision of the Constitution alone, but to contemplate all, and therefore to limit one conceded attribute by those qualifications which naturally result from the other powers granted by that instrument, so that the whole may be interpreted by the spirit which vivifies, and not by the letter which killeth. Undoubtedly, the power to carry on war and to make treaties implies also the exercise of those incidents which ordinarily inhere in them. Indeed, in view of the rule of construction which I have just conceded,—that all powers conferred by the Constitution must be interpreted with reference to the nature of the government, and be construed in harmony with related provisions of the Constitution,—it seems to me impossible to conceive that the treaty-making power by a mere cession can incorporate an alien people into the United States without the express or implied approval of Congress. And from this it must follow that there can be no foundation for the assertion that, where the treaty-making power has inserted conditions which preclude incorporation until Congress has acted in respect thereto, such conditions are void and incorporation results in spite thereof. If the treaty-making power can absolutely, without the consent of Congress, incorporate territory, and if that power may not insert conditions against incorporation, it must follow that the treaty-making power is endowed by the Constitution with the most unlimited right, susceptible of destroying every other provision of

the Constitution; that is, it may wreck our institutions. If the proposition be true, then millions of inhabitants of alien territory, if acquired by treaty, can, without the desire or consent of the people of the United States speaking through Congress, be immediately and irrevocably incorporated into the United States, and the whole structure of the government be overthrown. While thus aggrandizing the treaty-making power on the one hand, the construction at the same time minimizes it on the other, in that it strips that authority of any right to acquire territory upon any condition which would guard the people of the United States from the evil of immediate incorporation. The treaty-making power, then, under this contention, instead of having the symmetrical functions which belong to it from its very nature, becomes distorted,—vested with the right to destroy upon the one hand, and deprived of all power to protect the government on the other.

“And, looked at from another point of view, the effect of the principle asserted is equally antagonistic, not only to the express provisions, but to the spirit of the Constitution in other respects. Thus, if it be true that the treaty-making power has the authority which is asserted, what becomes of that branch of Congress which is peculiarly the representative of the people of the United States, and what is left of the functions of that body under the Constitution? For, although the House of Representatives might be unwilling to agree to the incorporation of alien races, it would be impotent to prevent its accomplishment, and the express provisions conferring upon Congress the power to regulate commerce, the right to raise revenue,—bills for which, by the Constitution, must originate in the House of Representatives,—and the authority to prescribe uniform naturalization laws, would be in effect set at naught by the treaty-making power. And the consequent result—incorporation—would be

beyond all future control of or remedy by the American people, since, at once and without hope of redress or power of change, incorporation by the treaty would have been brought about. The inconsistency of the position is at once manifest. The basis of the argument is that the treaty must be considered to have incorporated, because acquisition presupposes the exercise of judgment as to fitness for immediate incorporation. But the deduction drawn is, although the judgment exercised is against immediate incorporation and this result is plainly expressed, the conditions are void because no judgment against incorporation can be called into play.

“All the confusion and dangers above indicated, however, it is argued, are more imaginary than real, since, although it be conceded that the treaty-making power has the right by cession to incorporate without the consent of Congress, that body may correct the evil by availing itself of the provision of the Constitution giving to Congress the right to dispose of the territory and other property of the United States. This assumes that there has been absolute incorporation by the treaty-making power on the one hand, and yet asserts that Congress may deal with the territory as if it had not been incorporated into the United States. In other words, the argument adopts conflicting theories of the Constitution, and applies them both at the same time. I am not unmindful that there has been some contrariety of decision on the subject of the meaning of the clause empowering Congress to dispose of the territories and other property of the United States, some adjudged cases treating that article as referring to property as such, and others deriving from it the general grant of power to govern territories. In view, however, of the relations of the territories to the government of the United States at the time of the adoption of the Constitution, and the solemn pledge then existing that they should forever

'remain a part of the Confederacy of the United States of America,' I cannot resist the belief that the theory that the disposing clause relates as well to a relinquishment or cession of sovereignty as to a mere transfer of rights of property is altogether erroneous.

"Observe, again, the inconsistency of this argument. It considers, on the one hand, that so vital is the question of incorporation that no alien territory may be acquired by a cession without absolutely endowing the territory with incorporation and the inhabitants with resulting citizenship, because, under our system of government, the assumption that a territory and its inhabitants may be held by any other title than one incorporating is impossible to be thought of. And yet, to avoid the evil consequences which must follow from accepting this proposition, the argument is that all citizenship of the United States is precarious and fleeting, subject to be sold at any moment like any other property. That is to say, to protect a newly acquired people in their presumed rights, it is essential to degrade the whole body of American citizenship.

"The reasoning which has sometimes been indulged in by those who asserted that the Constitution was not at all operative in the territories is that, as they were acquired by purchase, the right to buy included the right to sell. This has been met by the proposition that if the country purchased and its inhabitants became incorporated into the United States, it came under the shelter of the Constitution, and no power existed to sell American citizens. In conformity to the principles which I have admitted, it is impossible for me to say at one and the same time that territory is an integral part of the United States, protected by the Constitution, and yet the safeguards, privileges, rights, and immunities which arise from this situation are so ephemeral in their character that by a mere act of sale they may be destroyed.

And applying this reasoning to the provisions of the treaty under consideration, to me it seems indubitable that if the treaty with Spain incorporated all the territory ceded into the United States, it resulted that the millions of people to whom that treaty related were, without the consent of the American people as expressed by Congress, and without any hope of relief, indissolubly made a part of our common country.

“Undoubtedly, the thought that under the Constitution power existed to dispose of people and territory, and thus to annihilate the rights of American citizens, was contrary to the conceptions of the Constitution entertained by Washington and Jefferson. In the written suggestions of Mr. Jefferson, when Secretary of State, reported to President Washington in March, 1792, on the subject of proposed negotiations between the United States and Spain, which were intended to be communicated by way of instruction to the commissioners of the United States appointed to manage such negotiations, it was observed, in discussing the possibility as to compensation being demanded by Spain ‘for the ascertainment of our right’ to navigate the lower part of the Mississippi, as follows: ‘We have nothing else’ (than a relinquishment of certain claims on Spain) ‘to give in exchange. For, as to territory, we have neither the right, nor the disposition, to alienate an inch of what belongs to any member of our Union. Such a proposition therefore is totally inadmissible, and not to be treated for a moment.’ Ford’s Writings of Jefferson, vol. 5, p. 476.

“The rough draft of these observations was submitted to Mr. Hamilton, then Secretary of the Treasury, for suggestions, previously to sending it to the President, some time before March 5, and Hamilton made the following (among other) notes upon it: ‘Page 25. Is it true that the United States have no right to alienate an inch of the territory in question, except in the case

of necessity intimated in another place? Or will it be useful to avow the denial of such a right? It is apprehended that the doctrine which restricts the alienation of territory to cases of extreme necessity is applicable rather to peopled territory than to waste and uninhabited districts. Positions restraining the right of the United States to accommodate to exigencies which may arise ought ever to be advanced with great caution.' Ford's Writings of Jefferson, vol. 5, p. 443.

"Respecting this note, Mr. Jefferson commented as follows: 'The power to alienate the unpeopled territories of any state is not among the enumerated powers given by the Constitution to the general government, and if we may go out of that instrument and accommodate to exigencies which may arise by alienating the unpeopled territory of a state, we may accommodate ourselves a little more by alienating that which is peopled, and still a little more by selling the people themselves. A shade or two more in the degree of exigency is all that will be requisite, and of that degree we shall ourselves be the judges. However, may it not be hoped that these questions are forever laid to rest by the 12th Amendment once made a part of the Constitution, declaring expressly that "the powers not delegated to the United States by the Constitution are reserved to the states respectively?" And if the general government has no power to alienate the territory of a state, it is too irresistible an argument to deny ourselves the use of it on the present occasion.' *Ibid.*

"The opinions of Mr. Jefferson, however, met the approval of President Washington. On March 18, 1792, in inclosing to the commissioners to Spain their commission, he said, among other things: 'You will herewith receive your commission; as also observations on these several subjects reported to the President and approved by him, which will therefore serve as instructions for you. These expressing minutely the sense of our gov-

ernment, and what they wish to have done, it is unnecessary for me to do more here than desire you to pursue these objects unremittingly,' etc. Ford's Writings of Jefferson, vol. 5, p. 456.

"When the subject-matter to which the negotiation related is considered, it becomes evident that the word 'state,' as above used, related merely to territory which was either claimed by some of the states, as Mississippi territory was by Georgia, or to the Northwest Territory, embraced within the ordinance of 1787 [1 Stat. at L. 51], or the territory south of the Ohio (Tennessee), which had also been endowed with all the rights and privileges conferred by that ordinance, and all which territory had originally been ceded by states to the United States under express stipulations that such ceded territory should be ultimately formed into states of the Union. And this meaning of the word 'state' is absolutely in accord with what I shall hereafter have occasion to demonstrate was the conception entertained by Mr. Jefferson of what constituted the United States.

"True, from the exigency of a calamitous war or the necessity of a settlement of boundaries, it may be that citizens of the United States may be expatriated by the action of the treaty-making power, impliedly or expressly ratified by Congress.

"But the arising of these particular conditions cannot justify the general proposition that territory which is an integral part of the United States may, as a mere act of sale, be disposed of. If, however, the right to dispose of an incorporated American territory and citizens by the mere exertion of the power to sell be conceded, *arguendo*, it would not relieve the dilemma. It is ever true that, where a malign principle is adopted, as long as the error is adhered to it must continue to produce its baleful results. Certainly, if there be no power to acquire subject to a condition, it must follow that there is no authority to dispose of subject to conditions, since it cannot be that the mere change of

form of the transaction could bestow a power which the Constitution has not conferred. It would follow, then, that any conditions annexed to a disposition which looked to the protection of the people of the United States, or to enable them to safeguard the disposal of territory, would be void; and thus it would be that either the United States must hold on absolutely, or must dispose of unconditionally.

"A practical illustration will at once make the consequences clear. Suppose Congress should determine that the millions of inhabitants of the Philippine islands should not continue appurtenant to the United States, but that they should be allowed to establish an autonomous government, outside of the Constitution of the United States, coupled, however, with such conditions providing for control as far only as essential to the guaranty of life and property and to protect against foreign encroachment. If the proposition of incorporation be well founded, at once the question would arise whether the ability to impose these conditions existed, since no power was conferred by the Constitution to annex conditions which would limit the disposition. And if it be that the question of whether territory is immediately fit for incorporation when it is acquired is a judicial, and not a legislative one, it would follow that the validity of the conditions would also come within the scope of judicial authority, and thus the entire political policy of the government be alone controlled by the judiciary.

"The theory as to the treaty-making power upon which the argument which has just been commented upon rests, it is now proposed to be shown, is refuted by the history of the government from the beginning. There has not been a single cession made from the time of the Confederation up to the present day, excluding the recent treaty with Spain, which has not contained stipulations to the effect that the United States through Con-

gress would either not disincorporate or would incorporate the ceded territory into the United States. There were such conditions in the deed of cession by Virginia when it conveyed the Northwest Territory to the United States. Like conditions were attached by North Carolina to the cession whereby the territory south of the Ohio, now Tennessee, was transferred. Similar provisions were contained in the cession by Georgia of the Mississippi territory, now the states of Alabama and Mississippi. Such agreements were also expressed in the treaty of 1803, ceding Louisiana [8 Stat. at L. 202]; that of 1819, ceding the Floridas [8 Stat. at L. 252]; and in the treaties of 1848 [9 Stat. at L. 922] and 1853 [10 Stat. at L. 1031], by which a large extent of territory was ceded to this country, as also in the Alaska treaty of 1867 [15 Stat. at L. 539]. To adopt the limitations on the treaty-making power now insisted upon would presuppose that every one of these conditions thus sedulously provided for were superfluous, since the guaranties which they afforded would have obtained, although they were not expressly provided for.

“When the various treaties by which foreign territory has been acquired are considered in the light of the circumstances which surround them, it becomes to my mind clearly established that the treaty-making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, express or implied, of Congress, and that no question to the contrary has ever been even mooted. To appreciate this it is essential to bear in mind what the words ‘United States’ signified at the time of the adoption of the Constitution. When by the treaty of peace with Great Britain the independence of the United States was acknowledged [8 Stat. at L. 80], it is unquestioned that all the territory within the boundaries defined in that treaty, whatever may have been the disputes as to title,

substantially belonged to particular states. The entire territory was part of the United States, and all the native white inhabitants were citizens of the United States, and endowed with the rights and privileges arising from that relation. When, as has already been said, the Northwest Territory was ceded by Virginia, it was expressly stipulated that the rights of the inhabitants in this regard should be respected. The ordinance of 1787 [1 Stat. at L. 51], providing for the government of the Northwest Territory, fulfilled this promise on behalf of the Confederation. Without undertaking to reproduce the text of the ordinance, it suffices to say that it contained a bill of rights, a promise of ultimate statehood, and it provided (*italics mine*) that 'the said territory and the states which may be formed therein *shall ever remain a part of this Confederacy of the United States of America*, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made, and to all the acts and ordinances of the United States in Congress assembled, conformably thereto.' It submitted the inhabitants to a liability for a tax to pay their proportional part of the public debt and the expenses of the government, to be assessed by the rule of apportionment which governed the states of the Confederation. It forbade slavery within the territory, and contained a stipulation that the provisions of the ordinance should ever remain unalterable unless by common consent.

"Thus it was at the adoption of the Constitution, the United States, as a geographical unit and as a governmental conception both in the international and domestic sense, consisted, not only of states, but also of territories, all the native white inhabitants being endowed with citizenship, protected by pledges of a common union, and, except as to political advantages, all enjoying equal rights and freedom, and safeguarded by substantially sim-

ilar guaranties, all being under the obligation to contribute their proportionate share for the liquidation of the debt and future expenses of the general government.

“The opinion has been expressed that the ordinance of 1787 became inoperative and a nullity on the adoption of the Constitution (Taney, Ch. J., in *Scott v. Sandford*, 19 How. 438, 15 L. ed. 714), while, on the other hand, it has been said that the ordinance of 1787 was ‘the most solemn of all engagements,’ and became a part of the Constitution of the United States by reason of the 6th article, which provided that ‘all debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.’ Per Baldwin, J., concurring opinion in *Pollard v. Kibbe*, 14 Pet. 417, 10 L. ed. 521, and per Catron, J., in dissenting opinion in *Strader v. Graham*, 10 How. 98, 13 L. ed. 343. Whatever view may be taken of this difference of legal opinion, my mind refuses to assent to the conclusion that under the Constitution the provision of the Northwest Territory ordinance making such territory forever a part of the Confederation was not binding on the government of the United States when the Constitution was formed. When it is borne in mind that large tracts of this territory were reserved for distribution among the Continental soldiers, it is impossible for me to believe that it was ever considered that the result of the cession was to take the Northwest Territory out of the Union, the necessary effect of which would have been to expatriate the very men who by their suffering and valor had secured the liberty of their united country. Can it be conceived that North Carolina, after the adoption of the Constitution, would cede to the general government the territory south of the Ohio river, intending thereby to expatriate those dauntless mountaineers of North Carolina who had shed lustre upon the Revolutionary

arms by the victory of King's mountain? And the rights bestowed by Congress after the adoption of the Constitution, as I shall proceed to demonstrate, were utterly incompatible with such a theory.

"Beyond question, in one of the early laws enacted at the first session of the First Congress, the binding force of the ordinance was recognized, and certain of its provisions concerning the appointment of officers in the territory were amended to conform the ordinance to the new Constitution. 1 Stat. at L. 50, chap. 8.

"In view of this it cannot, it seems to me, be doubted that the United States continued to be composed of states and territories, all forming an integral part thereof and incorporated therein, as was the case prior to the adoption of the Constitution. Subsequently, the territory now embraced in the state of Tennessee was ceded to the United States by the state of North Carolina. In order to insure the rights of the native inhabitants, it was expressly stipulated that the inhabitants of the ceded territory should enjoy all the rights, privileges, benefits, and advantages set forth in the ordinance 'of the late Congress for the government of the western territory of the United States.' A condition was, however, inserted in the cession, that no regulation should be made by Congress tending to emancipate slaves. By act of April 2, 1790 (1 Stat. at L. 106; chap. 6) this cession was accepted. And at the same session, on May 26, 1790, an act was passed for the government of this territory, under the designation of 'the territory of the United States south of the Ohio river.' 1 Stat. at L. 123, chap. 14. This act, except as to the prohibition which was found in the Northwest Territory ordinance as to slavery, in express terms declared that the inhabitants of the territory should enjoy all the rights conferred by that ordinance.

"A government for the Mississippi territory was organized on

April 7, 1798. 1 Stat. at L. 549, chap. 28. The land embraced was claimed by the state of Georgia, and her rights were saved by the act. The 6th section thereof provided as follows:

“Sec. 6. *And be it further enacted*, That from and after the establishment of the said government, the people of the aforesaid territory shall be entitled to and enjoy, all and singular, the rights, privileges, and advantages granted to the people of the territory of the United States northwest of the river Ohio, in and by the aforesaid ordinance of the thirteenth day of July, in the year one thousand seven hundred and eighty-seven, in as full and ample a manner as the same are possessed and enjoyed by the people of the said last-mentioned territory.’

“Thus clearly defined by boundaries, by common citizenship, by like guaranties, stood the United States when the plan of acquiring by purchase from France the province of Louisiana was conceived by President Jefferson. Naturally, the suggestion which arose was the power on the part of the government of the United States, under the Constitution, to incorporate into the United States—a Union then composed, as I have stated, of states and territories—a foreign province inhabited by an alien people, and thus make them partakers in the American commonwealth. Mr. Jefferson, not doubting the power of the United States to acquire, consulted Attorney General Lincoln as to the right by treaty to stipulate for incorporation. By that officer Mr. Jefferson was, in effect, advised that the power to incorporate, that is, to share the privileges and immunities of the people of the United States with a foreign population, required the consent of the people of the United States, and it was suggested, therefore, that if a treaty of cession were made containing such agreements it should be put in the form of a change of boundaries, instead of a cession, so as thereby to bring the territory within the United States. The letter of Mr. Lincoln was sent by Pres-

ident Jefferson to Mr. Gallatin, the Secretary of the Treasury. Mr. Gallatin did not agree as to the propriety of the expedient suggested by Mr. Lincoln. In a letter to President Jefferson, in effect so stating, he said: 'But does any constitutional objection really exist? To me it would appear (1) that the United States as a nation have an inherent right to acquire territory; (2) that whenever that acquisition is by treaty, the same constituted authorities in which the treaty-making power is vested have a constitutional right to sanction the acquisition; (3) that whenever the territory has been acquired Congress have the power, either of admitting into the Union as a new state, or of annexing to a state, with the consent of that state, or of making regulations for the government of such territory.' Gallatin's Writings, vol.1, p. 11, etc.

"To this letter President Jefferson replied in January, 1803, clearly showing that he thought there was no question whatever of the right of the United States to acquire, but that he did not believe incorporation could be stipulated for and carried into effect without the consent of the people of the United States. He said (*italics mine*): 'You are right, in my opinion, as to Mr. L.'s proposition: *There is no constitutional difficulty as to the acquisition of territory, and whether when acquired it may be taken into the Union by the Constitution as it now stands will become a question of expediency.* I think it will be safer not to permit the enlargement of the Union but by amendment of the Constitution.' Gallatin's Writings, vol. 1, p. 115.

"And the views of Mr. Madison, then Secretary of State, exactly conformed to those of President Jefferson, for, on March 2, 1803, in a letter to the commissioners who were negotiating the treaty, he said: 'To incorporate the inhabitants of the hereby ceded territory with the citizens of the United States, being a provision which cannot now be made, it is to be expected from

the character and policy of the United States that such incorporation will take place without unnecessary delay.' 2 State Papers, 540.

"Let us pause for a moment to accentuate the irreconcilable conflict which exists between the interpretation given to the Constitution at the time of the Louisiana treaty by Jefferson and Madison, and the import of that instrument as now insisted upon. You are to negotiate, said Madison to the commissioners, to obtain a cession of the territory, but you must not under any circumstances agree 'to incorporate the inhabitants of the hereby ceded territory with the citizens of the United States, being a provision which cannot now be made.' Under the theory now urged, Mr. Madison should have said: You are to negotiate for the cession of the territory of Louisiana to the United States, and, if deemed by you expedient in accomplishing this purpose, you may provide for the immediate incorporation of the inhabitants of the acquired territory into the United States. This you can freely do because the Constitution of the United States has conferred upon the treaty-making power the absolute right to bring all the alien people residing in the acquired territory into the United States, and thus divide with them the rights which peculiarly belong to the citizens of the United States. Indeed, it is immaterial whether you make such agreements, since by the effect of the Constitution, without reference to any agreements which you may make for that purpose, all the alien territory and its inhabitants will instantly become incorporated into the United States if the territory is acquired.

"Without going into details, it suffices to say that a compliance with the instructions given them would have prevented the negotiators on behalf of the United States from inserting in the treaty any provision looking even to the ultimate incorpora-

tion of the acquired territory into the United States. In view of the emergency and exigencies of the negotiations, however, the commissioners were constrained to make such a stipulation, and the treaty provided as follows:

“‘Art. 3. The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.’ 8 Stat. at L. 202.

“Weighing the provisions just quoted, it is evident they refute the theory of incorporation arising at once from the mere force of a treaty, even although such result be directly contrary to any provisions which a treaty may contain. Mark the language. It expresses a promise: ‘The inhabitants of the ceded territory shall be incorporated into the Union of the United States. . . .’ Observe how guardedly the fulfilment of this pledge is postponed until its accomplishment is made possible by the will of the American people, since it is to be executed only ‘as soon as possible according to the principles of the Federal Constitution.’ If the view now urged be true, this wise circumspection was unnecessary, and, indeed, as I have previously said, the entire proviso was superfluous, since everything which it assured for the future was immediately and unalterably to arise.

“It is said, however, that the treaty for the purchase of Louisiana took for granted that the territory ceded would be immediately incorporated into the United States, and hence the guaranties contained in the treaty related, not to such incorporation, but was a pledge that the ceded territory was to be made a part

of the Union as a state. The minutest analysis, however, of the clauses of the treaty fails to disclose any reference to a promise of statehood, and hence it can only be that the pledges made referred to incorporation into the United States. This will further appear when the opinions of Jefferson and Madison and their acts on the subject are reviewed. The argument proceeds upon the theory that the words of the treaty, 'shall be incorporated into the Union of the United States,' could only have referred to a promise of statehood, since the then existing and incorporated territories were not a part of the Union of the United States, as that Union consisted only of the states. But this has been shown to be unfounded, since the 'Union of the United States' was composed of states and territories, both having been embraced within the boundaries fixed by the treaty of peace between Great Britain and the United States [8 Stat. at L. 81], which terminated the Revolutionary war, the latter, the territories, embracing districts of country which were ceded by the states to the United States under the express pledge that they should ever remain a part thereof. That this conception of the Union composing the United States was the understanding of Jefferson and Madison, and indeed of all those who participated in the events which preceded and led up to the Louisiana treaty, results from what I have already said, and will be additionally demonstrated by statements to be hereafter made. Again, the inconsistency of the argument is evident. Thus, whilst the promise upon which it proceeds is that foreign territory, when acquired, becomes at once a part of the United States, despite conditions in the treaty expressly excluding such consequence, it yet endeavors to escape the refutation of such theory which arises from the history of the government by the contention that the territories which were a part of the United States were not component constituents of the

Union which composed the United States. I do not understand how foreign territory which has been acquired by treaty can be asserted to have been absolutely incorporated into the United States as a part thereof despite conditions to the contrary inserted in the treaty, and yet the assertion be made that the territories which, as I have said, were in the United States originally as a part of the states, and which were ceded by them upon express condition that they should forever so remain a part of the United States, were not a part of the Union composing the United States. The argument, indeed, reduces itself to this: that for the purpose of incorporating foreign territory into the United States, domestic territory must be disincorporated. In other words, that the Union must be, at least in theory, dismembered for the purpose of maintaining the doctrine of the immediate incorporation of alien territory.

"That Mr. Jefferson deemed the provision of the treaty relating to incorporation to be repugnant to the Constitution is unquestioned. While he conceded, as has been seen, the right to acquire, he doubted the power to incorporate the territory into the United States without the consent of the people by a constitutional amendment. In July, 1803, he proposed two drafts of a proposed amendment, which he thought ought to be submitted to the people of the United States to enable them to ratify the terms of the treaty. The first of these, which is dated July, 1803, is printed in the margin.*

"The second and revised amendment was as follows: 'Louisiana, as ceded by France to the United States, is made a part of

*"First draft of Mr. Jefferson's proposed amendment to the Constitution: 'The province of Louisiana is incorporated with the United States and made part thereof. The rights of occupancy in the soil and of self-government are confirmed to Indian inhabitants as they now exist.' It then proceeded with other provisions relative to Indian rights and possession and exchange of lands, and forbidding Congress to dispose of the land, otherwise than is therein provided without further amendment to the Constitution. This

the United States. Its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations. Save only that, as to the portion thereof lying north of the latitude of the mouth of the Arcana river, no new state shall be established nor any grants of land made therein other than to Indians in exchange for equivalent portions of lands occupied by them until an amendment of the Constitution shall be made for those purposes. Florida also, whensoever it may be rightfully obtained, shall become a part of the United States. Its white inhabitants shall thereupon become citizens, and shall stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations.' Ford's Writings of Jefferson, vol. 8, p. 241.

"It is strenuously insisted that Mr. Jefferson's conviction on the subject of the repugnancy of the treaty to the Constitution was based alone upon the fact that he thought the treaty exceeded the limits of the Constitution, because he deemed that it provided for the admission, according to the Constitution, of the acquired territory as a new state or states into the Union, and hence, for the purpose of conferring this power, he drafted the amendment. The contention is refuted by two considerations: The first, because the two forms of amendment which Mr. Jefferson prepared did not purport to confer any power upon Congress to admit new states; and, second, they absolutely forbade Congress from admitting a new state out of a described part of the territory without a further amendment to the Constitution. It

draft closes thus: 'Except as to that portion thereof which lies south of the latitude of 31°, which, whenever they deem expedient, they may enact into a territorial government, either separate or as making part with one on the eastern side of the river, vesting the inhabitants thereof with all rights possessed by other territorial citizens of the United States.' Writings of Jefferson, edited by Ford, vol. 8, p. 241."

cannot be conceived that Mr. Jefferson would have drafted an amendment to cure a defect which he thought existed, and yet say nothing in the amendment on the subject of such defect. And, moreover, it cannot be conceived that he drafted an amendment to confer a power he supposed to be wanting under the Constitution, and thus ratify the treaty, and yet in the very amendment withhold in express terms, as to a part of the ceded territory, the authority which it was the purpose of the amendment to confer.

"I excerpt in the margin* two letters from Mr. Jefferson, one

*"Letter to William Dunbar of July 7, 1803:

"'Before you receive this you will have heard through the channel of the public papers of the cession of Louisiana by France to the United States. The terms as stated in the *National Intelligencer* are accurate. That the treaty may be ratified in time, I have found it necessary to convene Congress on the 17th of October, and it is very important for the happiness of the country that they should possess all information which can be obtained respecting it, that they make the best arrangements practicable for its good government. It is most necessary because they will be obliged to ask from the people an amendment of the Constitution authorizing their receiving the province into the Union and providing for its government, and limitations of power which shall be given by that amendment will be unalterable but by the same authority.' Jefferson's Writings, vol. 8, p. 254.

"Letter to Wilson Cary Nicholas of September 7, 1803:

"'I am aware of the force of the observations you make on the power given by the Constitution to Congress to admit new states into the Union without restraining the subject to the territory then constituting the United States. But when I consider that the limits of the United States are precisely fixed by the treaty of 1783 [8 Stat. at L. 80], that the Constitution expressly declares itself to be made for the United States, I cannot help believing that the intention was to permit Congress to admit into the Union new states which should be formed out of the territory for which and under whose authority alone they were then acting. I do not believe it was meant that they might receive England, Ireland, Holland, etc., into it, which would be the case under your construction. When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation where it is found necessary, than to assume it by a construction which would make our powers boundless.' Writings of Jefferson, vol. 8, p. 247."

written under date of July 7, 1803, to William Dunbar, and the other dated September 7, 1803, to Wilson Cary Nicholas, which show clearly the difficulties which were in the mind of Mr. Jefferson, and which remove all doubt concerning the meaning of the amendment which he wrote (and the adoption of which he deemed necessary to cure any supposed want of power concerning the treaty) would be provided for.

“These letters show that Mr. Jefferson bore in mind the fact that the Constitution in express terms delegated to Congress the power to admit new states, and therefore, no further authority on this subject was required. But he thought this power in Congress was confined to the area embraced within the limits of the United States, as existing at the adoption of the Constitution. To fulfil the stipulations of the treaty so as to cause the ceded territory to become a part of the United States, Mr. Jefferson deemed an amendment to the Constitution to be essential. For this reason the amendment which he formulated declared that the territory ceded was to be ‘a part of the United States, and its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations.’ What these words meant is not open to doubt when it is observed that they were but the paraphrase of the following words, which were contained in the first proposed amendment which Mr. Jefferson wrote: ‘Vesting the inhabitants thereof with all rights possessed by other territorial citizens of the United States, which clearly show that it was the want of power to incorporate the ceded country into the United States as a territory which was in Mr. Jefferson’s mind, and to accomplish which result he thought an amendment to the Constitution was required. This provision of the amendment applied to all of the territory ceded, and therefore brought it all into the United States, and hence:

placed it in a position where the power of Congress to admit new states would have attached to it. As Mr. Jefferson deemed that every requirement of the treaty would be fulfilled by incorporation, and that it would be unwise to form a new state out of the upper part of the new territory, after thus providing for the complete execution of the treaty by incorporation of all the territory into the United States, he inserted a provision forbidding Congress from admitting a new state out of a part of the territory.

"With the debates which took place on the subject of the treaty I need not particularly concern myself. Some shared Mr. Jefferson's doubts as to the right of the treaty-making power to incorporate the territory into the United States without an amendment of the Constitution; others deemed that the provision of the treaty was but a promise that Congress would ultimately incorporate as a territory, and, until by the action of Congress this latter result was brought about, full power of legislation to govern as deemed best was vested in Congress. This latter view prevailed. Mr. Jefferson's proposed amendment to the Constitution, therefore, was never adopted by Congress, and hence was never submitted to the people.

"An act was approved on October 31, 1803 (2 Stat. at L. 245, chap. 1), 'to enable the President of the United States to take possession of the territories ceded by France to the United States by the treaty concluded at Paris on the 30th of April last [8 Stat. at L. 200], and for the temporary government thereof.' The provisions of this act were absolutely incompatible with the conception that the territory had been incorporated into the United States by virtue of the cession. On November 10, 1803 (2 Stat. at L. 245, chap. 2), an act was passed providing for the issue of stock to raise the funds to pay for the territory. On February 24, 1804 (2 Stat. at L. 251, chap. 13), an act was approved which expressly extended certain revenue and other

laws over the ceded country. On March 26, 1804 (2 Stat. at L. 283, chap. 38), an act was passed dividing the province of Louisiana into Orleans territory on the south and the district of Louisiana to the north. This act extended over the territory of Orleans a large number of the general laws of the United States, and provided a form of government. For the purposes of government the district of Louisiana was attached to the territory of Indiana, which had been carved out of the Northwest Territory. Although the area described as Orleans territory was thus under the authority of a territorial government, and many laws of the United States had been extended by act of Congress to it, it was manifest that Mr. Jefferson thought that the requirement of the treaty that it should be incorporated into the United States had not been complied with.

“In a letter written to Mr. Madison on July 14, 1804, Mr. Jefferson, speaking of the treaty of cession, said (Ford’s Writings of Jefferson, vol. 8, p. 313): ‘The inclosed reclamations of Girod & Chote against the claims of Bapstroop to a monopoly of the Indian commerce supposed to be under the protection of the 3d article of the Louisiana convention, as well as some other claims to abusive grants, will probably force us to meet that question. The article has been worded with remarkable caution on the part of our negotiators. It is that the inhabitants shall be admitted as soon as possible, according to the principles of our Constitution, to the enjoyment of all the rights of citizens, and, in the meantime, *en attendant*, shall be maintained in their liberty, property, and religion. That is, that they shall continue under the protection of the treaty until the principles of our Constitution can be extended to them, when the protection of the treaty is to cease, and that of our own principles to take its place. But as this could not be done at once, it has been provided to be as soon as our rules will admit. Accordingly, Con-

gress has begun by extending about twenty particular laws by their titles, to Louisiana. Among these is the act concerning intercourse with the Indians, which establishes a system of commerce with them admitting no monopoly. That class of rights, therefore, are now taken from under the treaty and placed under the principles of our laws. I imagine it will be necessary to express an opinion to Governor Claiborne on this subject, after you shall have made up one.'

"In another letter to Mr. Madison, under date of August 15, 1804, Mr. Jefferson said (*Id.* p. 315): 'I am so much impressed with the expediency of putting a termination to the right of France to patronize the rights of Louisiana, which will cease with their complete adoption as citizens of the United States, that I hope to see that take place on the meeting of Congress.'

"At the following session of Congress, on March 2, 1805 (2 Stat. at L. 322, chap. 23), an act was approved, which, among other purposes, doubtless was intended to fulfil the hope expressed by Mr. Jefferson in the letter just quoted. That act, in the 1st section, provided that the inhabitants of the territory of Orleans 'shall be entitled to and enjoy all the rights, privileges, and advantages secured by the said ordinance' (that is the ordinance of 1787 [1 Stat. at L. 51]) 'and now enjoyed by the people of the Mississippi territory.' As will be remembered, the ordinance of 1787 had been extended to that territory. 1 Stat. at L. 550, chap. 28. Thus, strictly in accord with the thought embodied in the amendments contemplated by Mr. Jefferson, citizenship was conferred, and the territory of Orleans was incorporated into the United States to fulfil the requirements of the treaty, by placing it exactly in the position which it would have occupied had it been within the boundaries of the United States as a territory at the time the Constitution was framed. It is pertinent to recall that the treaty contained stipulations giving certain pref-

erences and commercial privileges for a stated period to the vessels of French and Spanish subjects, and that, even after the action of Congress above stated, this condition of the treaty continued to be enforced, thus demonstrating that, even after the incorporation of the territory, the express provisions conferring a temporary right which the treaty had stipulated for and which Congress had recognized were not destroyed, the effect being that incorporation as to such matter was for the time being in abeyance.

"The upper part of the province of Louisiana, designated by the act of March 26, 1804 (2 Stat. at L. 283, chap. 38), as the district of Louisiana, and by the act of March 3, 1805 (2 Stat. at L. 331, chap. 31), as the territory of Louisiana, was created the territory of Missouri on June 4, 1812. 2 Stat. at L. 743, chap. 95. By this latter act, though the ordinance of 1787 was not in express terms extended over the territory,—probably owing to the slavery agitation,—the inhabitants of the territory were accorded substantially all the rights of the inhabitants of the Northwest Territory. Citizenship was in effect recognized in the 9th section, whilst the 14th section contained an elaborate declaration of the rights secured to the people of the territory.

"Pausing to analyze the practical construction which resulted from the acquisition of the vast domain covered by the Louisiana purchase, it indubitably results, first, that it was conceded by every shade of opinion that the government of the United States had the undoubted right to acquire, hold, and govern the territory as a possession, and that incorporation into the United States could under no circumstances arise solely from a treaty of cession, even although it contained provisions for the accomplishment of such result; second, it was strenuously denied by many eminent men that, in acquiring territory, citizenship could be conferred upon the inhabitants within the acquired territory; in

other words, that the territory could be incorporated into the United States without an amendment to the Constitution; and, third, that the opinion which prevailed was that, although the treaty might stipulate for incorporation and citizenship under the Constitution, such agreements by the treaty-making power were but promises depending for their fulfilment on the future action of Congress. In accordance with this view the territory acquired by the Louisiana purchase was governed as a mere dependency until, conformably to the suggestion of Mr. Jefferson, it was by the action of Congress incorporated as a territory into the United States, and the same rights were conferred in the same mode by which other territories had previously been incorporated; that is, by bestowing the privileges of citizenship and the rights and immunities which pertained to the Northwest Territory.

“Florida was ceded by treaty signed on February 22, 1819 (8 Stat. at L. 252). Whilst drafted in accordance with the precedent afforded by the treaty ceding Louisiana, the Florida treaty was slightly modified in its phraseology, probably to meet the view that, under the Constitution, Congress had the right to determine the time when incorporation was to arise. Acting under the precedent afforded by the Louisiana case, Congress adopted a plan of government which was wholly inconsistent with the theory that the territory had been incorporated. General Jackson was appointed governor under this act, and exercised a degree of authority entirely in conflict with the conception that the territory was a part of the United States, in the sense of incorporation, and that those provisions of the Constitution which would have been applicable under that hypothesis were then in force. It will serve no useful purpose to go through the gradations of legislation adopted as to Florida. Suffice it to say that in 1822 (3 Stat. at L. 654, chap. 13), an

act was passed as in the case of Missouri, and presumably for the same reason, which, whilst not referring to the Northwest Territory ordinance, in effect endowed the inhabitants of that territory with the rights granted by such ordinance.

"This treaty also, it is to be remarked, contained discriminatory commercial provisions incompatible with the conception of immediate incorporation arising from the treaty, and they were enforced by the executive officers of the government.

"The intensity of the political differences which existed at the outbreak of hostilities with Mexico and at the termination of the war with that country, and the subject around which such conflicts of opinion centered, probably explains why the treaty of peace with Mexico departed from the form adopted in the previous treaties concerning Florida and Louisiana. That treaty, instead of expressing a cession in the form previously adopted, whether intentionally or not I am unable, of course, to say, resorted to the expedient suggested by Attorney General Lincoln to President Jefferson, and accomplished the cession by changing the boundaries of the two countries; in other words, by bringing the acquired territory within the described boundaries of the United States. The treaty, besides, contained a stipulation for rights of citizenship; in other words, a provision equivalent in terms to those used in the previous treaties to which I have referred. The controversy which was then flagrant on the subject of slavery prevented the passage of a bill giving California a territorial form of government, and California, after considerable delay, was therefore directly admitted into the Union as a state. After the ratification of the treaty various laws were enacted by Congress, which in effect treated the territory as acquired by the United States; and the executive officers of the government, conceiving that these acts were an implied or express ratification of the provisions of the treaty

by Congress, acted upon the assumption that the provisions of the treaty were thus made operative, and hence incorporation had thus become efficacious.

“Ascertaining the general rule from the provisions of this latter treaty and the practical execution which it received, it will be seen that the precedents established in the cases of Louisiana and Florida were departed from to a certain extent; that is, the rule was considered to be that where the treaty, in express terms, brought the territory within the boundaries of the United States and provided for incorporation, and the treaty was expressly or impliedly recognized by Congress, the provisions of the treaty ought to be given immediate effect. But this did not conflict with the general principles of the law of nations which I have at the outset stated, but enforced it, since the action taken assumed, not that incorporation was brought about by the treaty-making power wholly without the consent of Congress, but only that, as the treaty provided for incorporation in express terms, and Congress had acted without repudiating it, its provisions should be at once enforced.

“Without referring in detail to the acquisition from Russia of Alaska, it suffices to say that that treaty also contained provisions for incorporation, and was acted upon exactly in accord with the practical construction applied in the case of the acquisitions from Mexico, as just stated. However, the treaty ceding Alaska [15 Stat. at L. 539] contained an express provision excluding from citizenship the uncivilized native tribes, and it has been nowhere contended that this condition of exclusion was inoperative because of the want of power under the Constitution in the treaty-making authority to so provide, which must be the case if the limitation on the treaty-making power, which is here asserted, be well founded. The treaty concerning Alaska, therefore, adds cogency to the conception established by every

act of the government from the foundation,—that the condition of a treaty, when expressly or impliedly ratified by Congress, becomes the measure by which the rights arising from the treaty are to be adjusted.

“The demonstration which it seems to me is afforded by the review which has preceded is, besides, sustained by various other acts of the government which to me are wholly inexplicable except upon the theory that it was admitted that the government of the United States had the power to acquire and hold territory without immediately incorporating it. Take, for instance, the simultaneous acquisition and admission of Texas, which was admitted into the Union as a state by joint resolution of Congress, instead of by treaty. To what grant of power under the Constitution can this action be referred, unless it be admitted that Congress is vested with the right to determine when incorporation arises? It cannot be traced to the authority conferred on Congress to admit new states, for to adopt that theory would be to presuppose that this power gave the prerogative of conferring statehood on wholly foreign territory. But this I have incidentally shown is a mistaken conception. Hence, it must be that the action of Congress at one and the same time fulfilled the function of incorporation; and, this being so, the privilege of statehood was added. But I shall not prolong this opinion by occupying time in referring to the many other acts of the government which further refute the correctness of the propositions which are here insisted on and which I have previously shown to be without merit. In concluding my appreciation of the history of the government, attention is called to the 13th Amendment to the Constitution, which to my mind seems to be conclusive. The 1st section of the amendment, the *italics* being mine, reads as follows: ‘Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime,

whereof the party shall have been duly convicted, shall exist within the United States, *or any place subject to their jurisdiction.*' Obviously this provision recognized that there may be places subject to the jurisdiction of the United States, but which are not incorporated into it, and hence are not within the United States in the completest sense of those words.

"Let me proceed to show that the decisions of this court, without a single exception, are absolutely in accord with the true rule as evolved from a correct construction of the Constitution as a matter of first impression, and as shown by the history of the government which has been previously epitomized. As it is appropriate here, I repeat the quotation which has heretofore been made from the opinion, delivered by Mr. Chief Justice Marshall, in *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L. ed. 242, where, considering the Florida treaty, the court said (p. 542, L. ed. p. 255): 'The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose.'

"In *Fleming v. Page* the court, speaking through Mr. Chief Justice Taney, discussing the acts of the military forces of the United States while holding possession of Mexican territory, said (9 How. 614, 13 L. ed. 281): 'The United States, it is true, may extend its boundaries by conquest or treaty, and may demand the cession of territory as the condition of peace in order to indemnify its citizens for the injuries they have suffered, or to reimburse the government for the expense of the war. But this can be done only by the treaty-making power or the legislative authority.'

“In *Cross v. Harrison*, 16 How. 164, 14 L. ed. 889, the question for decision, as I have previously observed, was as to the legality of certain duties collected both before and after the ratification of the treaty of peace, on foreign merchandise imported into California. Part of the duties collected were assessed upon importations made by local officials before notice had been received of the ratification of the treaty of peace, and when duties were laid under a tariff which had been promulgated by the President. Other duties were imposed subsequent to the receipt of notification of the ratification, and these latter duties were laid according to the tariff as provided in the laws of the United States. All the exactions were upheld. The court decided that, prior to and up to the receipt of notice of the ratification of the treaty, the local government lawfully imposed the tariff then in force in California, although it differed from that provided by Congress, and that subsequent to the receipt of notice of the ratification of the treaty the duty prescribed by the act of Congress, which the President had ordered the local officials to enforce, could be lawfully collected. The opinion undoubtedly expressed the thought that by the ratification of the treaty in question, which, as I have shown, not only included the ceded territory within the boundaries of the United States, but also expressly provided for incorporation, the territory had become a part of the United States, and the body of the opinion quoted the letter of the Secretary of the Treasury, which referred to the enactment of laws of Congress by which the treaty had been impliedly ratified. The decision of the court as to duties imposed subsequent to the receipt of notice of the ratification of the treaty of peace undoubtedly took the fact I have just stated into view, and, in addition, unmistakably proceeded upon the nature of the rights which the treaty conferred. No comment can obscure or do away with the patent fact,

namely, that it was unequivocally decided that if different provisions had been found in the treaty a contrary result would have followed. Thus, speaking through Mr. Justice Wayne, the court said (16 How. 197, 14 L. ed. 903): 'By the ratification of the treaty California became a part of the United States. And, as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage.'

"It is, then, as I think, indubitably settled by the principles of the law of nations, by the nature of the government created under the Constitution, by the express and implied powers conferred upon that government by the Constitution, by the mode in which those powers have been executed, from the beginning, and by an unbroken line of decisions of this court, first announced by Marshall and followed and lucidly expounded by Taney, that the treaty-making power cannot incorporate territory into the United States without the express or implied assent of Congress, that it may insert in a treaty conditions against immediate incorporation, and that, on the other hand, when it has expressed in the treaty the conditions favorable to incorporation, they will, if the treaty be not repudiated by Congress, have the force of the law of the land, and therefore by the fulfilment of such conditions cause incorporation to result. It must follow, therefore, that where a treaty contains no conditions for incorporation, and, above all, where it not only has no such conditions, but expressly provides to the contrary, incorporation does not arise until, in the wisdom of Congress, it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.

"Does, then, the treaty in question contain a provision for

incorporation, or does it, on the contrary, stipulate that incorporation shall not take place from the mere effect of the treaty and until Congress has so determined?—is then the only question remaining for consideration.

“The provisions of the treaty with respect to the status of Porto Rico and its inhabitants are as follows:

“‘Article II. Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam, in the Marianas or Ladrões.’ [30 Stat. at L. 1755.]

“‘Article IX. Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside. The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.’ [30 Stat. at L. 1759.]

“‘Article X. The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.’ [30 Stat. at L. 1759, 1760.]

“It is to me obvious that the above-quoted provisions of the

treaty do not stipulate for incorporation, but, on the contrary, expressly provide that the 'civil rights and political status of the native inhabitants of the territories hereby ceded' shall be determined by Congress. When the rights to which this careful provision refers are put in juxtaposition with those which have been deemed essential from the foundation of the government to bring about incorporation, all of which have been previously referred to, I cannot doubt that the express purpose of the treaty was, not only to leave the status of the territory to be determined by Congress, but to prevent the treaty from operating to the contrary. Of course, it is evident that the express or implied acquiescence by Congress in a treaty so framed cannot import that a result was brought about which the treaty itself—giving effect to its provisions—could not produce. And, in addition, the provisions of the act by which the duty here in question was imposed, taken as a whole, seem to me plainly to manifest the intention of Congress that, for the present, at least, Porto Rico is not to be incorporated into the United States.

"The fact that the act directs the officers to swear to support the Constitution does not militate against this view, for, as I have conceded, whether the island be incorporated or not, the applicable provisions of the Constitution are there in force. A further analysis of the provisions of the act seems to me not to be required in view of the fact that, as the act was reported from the committee, it contained a provision conferring citizenship upon the inhabitants of Porto Rico, and this was stricken out in the Senate. The argument, therefore, can only be that rights were conferred, which, after consideration, it was determined should not be granted. Moreover I fail to see how it is possible, on the one hand, to declare that Congress in passing the act had exceeded its powers by treating Porto Rico as not

incorporated into the United States, and, at the same time, it be said that the provisions of the act itself amount to an incorporation of Porto Rico into the United States, although the treaty had not previously done so. It in reason cannot be that the act is void because it seeks to keep the island disincorporated, and, at the same time, that material provisions are not to be enforced because the act does incorporate. Two irreconcilable views of that act cannot be taken at the same time, the consequence being to cause it to be unconstitutional.

“In what has preceded I have in effect considered every substantial proposition, and have either conceded or reviewed every authority referred to as establishing that immediate incorporation resulted from the treaty of cession which is under consideration. Indeed, the whole argument in favor of the view that immediate incorporation followed upon the ratification of the treaty in its last analysis necessarily comes to this: Since it has been decided that incorporation flows from a treaty which provides for that result, when its provisions have been expressly or impliedly approved by Congress, it must follow that the same effect flows from a treaty which expressly stipulates to the contrary, even although the condition to that end has been approved by Congress. That is to say, the argument is this: Because a provision for incorporation when ratified incorporates, therefore a provision against incorporation must also produce the very consequence which it expressly provides against.

“The result of what has been said is that while, in an international sense, Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence, the impost in question assessed on mer-

chandise coming from Porto Rico into the United States after the cession was within the power of Congress, and that body was not, moreover, as to such impost, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the Constitution just referred to was not applicable to Congress in legislating for Porto Rico.

“Incidentally I have heretofore pointed out that the arguments of expediency pressed with so much earnestness and ability concern the legislative, and not the judicial, department of the government. But it may be observed that, even if the disastrous consequences which are foreshadowed as arising from conceding that the government of the United States may hold property without incorporation were to tempt me to depart from what seems to me to be the plain line of judicial duty, reason admonishes me that so doing would not serve to prevent the grave evils which it is insisted must come, but, on the contrary, would only render them more dangerous. This must be the result, since, as already said, it seems to me it is not open to serious dispute that the military arm of the government of the United States may hold and occupy conquered territory without incorporation for such length of time as may seem appropriate to Congress in the exercise of its discretion. The denial of the right of the civil power to do so would not, therefore, prevent the holding of territory by the United States if it was deemed best by the political department of the government, but would simply necessitate that it should be exercised by the military instead of the civil power.

“And to me it further seems apparent that another and more disastrous result than that just stated would follow as a consequence of an attempt to cause judicial judgment to invade the domain of legislative discretion. Quite recently one of the

stipulations contained in the treaty with Spain which is now under consideration came under review by this court. By the provision in question Spain relinquished 'all claim of sovereignty over and title to Cnba.' It was further provided in the treaty as follows: 'And as the island is upon the evacuation by Spain to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, and for the protection of life and property.'

"It cannot, it is submitted, be questioned that, under this provision of the treaty, as long as the occupation of the United States lasts, the benign sovereignty of the United States extends over and dominates the island of Cuba. Likewise, it is not, it seems to me, questionable that the period when that sovereignty is to cease is to be determined by the legislative department of the government of the United States in the exercise of the great duties imposed upon it, and with the sense of the responsibility which it owes to the people of the United States, and the high respect which it of course feels for all the moral obligations by which the government of the United States may, either expressly or impliedly, be bound. Considering the provisions of this treaty, and reviewing the pledges of this government extraneous to that instrument, by which the sovereignty of Cuba is to be held by the United States for the benefit of the people of Cuba and for their account, to be relinquished to them when the conditions justify its accomplishment, this court unanimously held in *Neely v. Henkel*, 180 U. S. 109, 45 L. ed. 448, 21 Sup. Ct. Rep. 302, that Cuba was not incorporated into the United States, and was a foreign country. It follows from this decision that it is lawful for the United States to take possession of and hold, in the exercise of its sovereign power, a particular territory,

without incorporating it into the United States, if there be obligations of honor and good faith which, although not expressed in the treaty, nevertheless sacredly bind the United States to terminate the dominion and control when, in its political discretion, the situation is ripe to enable it to do so. Conceding, then, for the purpose of the argument, it to be true that it would be a violation of duty under the Constitution for the legislative department, in the exercise of its discretion, to accept a cession of and permanently hold territory which is not intended to be incorporated, the presumption necessarily must be that that department, which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and therefore, when the unfitness of particular territory for incorporation is demonstrated, the occupation will terminate. I cannot conceive how it can be held that pledges made to an alien people can be treated as more sacred than is that great pledge given by every member of every department of the government of the United States to support and defend the Constitution.

“But if it can be supposed—which, of course, I do not think to be conceivable—that the judiciary would be authorized to draw to itself by an act of usurpation purely political functions, upon the theory that if such wrong is not committed a greater harm will arise, because the other departments of the government will forget their duty to the Constitution and wantonly transcend its limitations, I am further admonished that any judicial action in this case which would be predicated upon such an unwarranted conception would be absolutely unavailing. It cannot be denied that, under the rule clearly settled in *Neely v. Henkel*, 180 U. S. 109, 45 L. ed. 448, 21 Sup. Ct. Rep. 302, the sovereignty of the United States may be extended over foreign territory, to remain paramount until, in the discretion of

the political department of the government of the United States, it be relinquished. This method, then, of dealing with foreign territory, would in any event be available. Thus, the enthralling of the treaty-making power, which would result from holding that no territory could be acquired by treaty of cession without immediate incorporation, would only result in compelling a resort to the subterfuge of relinquishment of sovereignty, and thus indirection would take the place of directness of action,—a course which would be incompatible with the dignity and honor of the government.”

69.—Status of Porto Ricans and Filipinos.—In conformity with the provision of the treaty which declares that the civil rights and political status of the native inhabitants of the ceded territories shall be determined by the Congress, Congress, by the act of April 12, 1900 (31 Stat. at L. 77, chap. 191), establishing a civil government for Porto Rico, provided that “all inhabitants continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the 11th day of April, 1900, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the 11th day of April, 1899 (30 Stat. at L. 1754); and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such.” (Section 7.)

And by the act of July 1st, 1902 (32 Stat. at L. 691, chap. 1369), providing for the administration of the affairs of civil

government in the Philippine islands, Congress declared that "all inhabitants of the Philippine islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine islands, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December 10th, 1898 [30 Stat. at L. 1754]." (Section 4.)*

From a despatch of the United States consul at Amoy in August, 1903, it appeared that Buenaventura Chuntianlay, a Chinese merchant, born at Amoy, emigrated to the Philippines thirty years ago, and had been domiciled there since that time. In 1899 he married a native of the Philippines, and, as the result of the marriage, a son was born in the Philippine islands.

*In 1901, before the passage of this act, Antonio Gisbert y Bayot, a native inhabitant of the Philippine islands, who went to Barcelona, Spain, from Manila in May, 1900, was enrolled by the Spanish military authorities for service in the Spanish army, notwithstanding he exhibited a certificate of registration issued to him in January, 1900, by the United States military authorities at Manila, and also a certificate issued by the United States consul general at Barcelona, stating that he was a native inhabitant of the Philippines, and under the protection of the United States. It appeared that the Spanish authorities did not contest the citizenship of Gisbert, but claimed that they were not obliged to exempt him from service as he was not registered at the consulate as an American citizen. The consul general protested to the local authorities, and the United States minister, under the instructions of the Department of State, brought the case to the attention of the Spanish government, and pointed out that, while Gisbert could only be regarded as a native inhabitant of the Philippines, under the protection of the United States, he could not, in view of the terms and stipulations of the treaty of peace, be regarded as a subject of Spain, liable for military service. The Spanish authorities subsequently informed the consul general that Gisbert had been exempted from military service. For. Rel. 1902, pp. 949-954

December 5, 1902. Chuntianlay, who was then with his family on a temporary visit in Amoy, wished to be registered in the consulate, or, failing that, desired to have either his wife or child registered. The consul stated that Chuntianlay had considerable property interests in Amoy, and that his object in trying to register a member of the family in the consulate was to enable him to transfer the property to the member so registered, thus putting it under American ownership, to avoid the assessments of the Chinese officials, which are said to be quite heavy on property owned by nonresidents. The consul inquired whether any one of his family was entitled to registration, and, if so, whether it would be proper for him to record a transfer of property from Mr. Chuntianlay to such member of his family.

In reply, the Acting Secretary of State said: "Upon the facts stated, neither of the Chuntianlays appears to be entitled to registration in the consulate.

"Section 4 of the act of July 1, 1902 (32 Stat. at L. 692, chap. 1369), provides that 'all inhabitants of the Philippine islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine islands, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December 10th, 1898.' [30 Stat. at L. 1754.]

"While Mr. Chuntianlay comes within the language of the statute, 'inhabitants of the Philippine islands,' he is not included within the description, 'who were Spanish subjects on the 11th day of April, 1899.' According to the statement in your despatch, he is 'a Chinese merchant who emigrated to the Phil-

ippine islands thirty years ago and has been domiciled there since that time.' If he had acquired Spanish citizenship it is inferred that that fact would have been stated.

"Assuming, then, that Mr. Chuntianlay is, as stated in your despatch, a Chinese subject domiciled in the Philippine islands, upon his marriage to a native of the Philippines, under the general rule that the nationality of the wife follows that of the husband, she became a Chinese subject.

"The son, born in the Philippines December 5, 1902, is not a citizen of the Philippine islands within the meaning of the statute, as that only applies to the children of inhabitants of the islands who were Spanish subjects on April 11, 1899." Asst. Secy. Adeo to United States Consul at Amoy, September 5, 1903.

The treaty provision and the act of Congress of April 12, 1900, were construed by the circuit court of the United States for the southern district of New York, in October, 1902, in the case of *Re Gonzalez*, 118 Fed. 941, upon a petition for a writ of habeas corpus. The facts are stated in the opinion of the court, Lacombe, Judge: "Petitioner, an unmarried woman, is a native of Porto Rico, twenty years of age, who arrived here from that island on August 24, 1902. She was detained at Ellis island immigrant station, was duly examined by a board of special inquiry, and was excluded from admission into the United States upon the ground that she was liable to become a public charge. The only question open for discussion on this application is whether or not petitioner is an alien. Upon all other questions the decision of the appropriate immigration officers, when adverse to the admission of the alien, is made final, unless reversed on appeal to the Secretary of the Treasury. Act August 18, 1894 (28 Stat. at L. 390, chap. 301 [U. S. Comp. Stat. 1901, p. 1303]). . . . The 14th Amendment

to the Constitution provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. It is not disputed that petitioner was by birth an alien. Unless in some appropriate way she has since been naturalized, she is still an alien. There is no suggestion that she was ever naturalized under the general laws prescribed by Congress regulating the admission of aliens to citizenship. The treaty of Paris, unlike earlier treaties which dealt with the Louisiana and Florida purchases, with California, and with Alaska, did not undertake to make the native-born inhabitants of Porto Rico citizens of the United States. It expressly provided that 'the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.' In conformity with this provision of the treaty it was provided in act April 12, 1900, chap. 191, § 7 [31 Stat. at L. 77], 'that all inhabitants continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States (excepting such as had preserved their allegiance to Spain), and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of "The People of Porto Rico," with governmental powers as hereinafter conferred and with power to sue and be sued as such.' This legislation has certainly not operated to effect a naturalization of the petitioner as a citizen of the United States. Being foreign born and not naturalized, she remains an alien, and subject to the provisions of law regulating the admission of aliens who come to the United States."

The writ was dismissed.

In the case of Mercado, a native of Porto Rico, who, in 1901, sought the intervention of this government to present for him a claim against the government of Venezuela, where he had been residing for fourteen years, it was held that as he was not an "inhabitant" of Porto Rico at the time of its cession to the United States, and was not a citizen of Porto Rico within the definition of the act of Congress of April 12, 1900 (31 Stat. at L. 77), he was not entitled to the protection of the United States. Mr. Adeo to Mr. Loomis, August 10, 1901, MSS. Inst. to Venezuela.

In the case of Marrero, a native of Porto Rico, who had resided in Chile since 1884, but who proposed, in 1901, to return to Porto Rico to perform the duties of citizenship there, it was held by Acting Secretary Hill that the language of § 7 of the act of April 12, 1900 (31 Stat. at L. 77, chap. 191), was to be construed in its general legal sense, in which continued personal presence is not necessary to constitute continuous residence; and that a native of Porto Rico who makes it his permanent domicile does not, therefore, lose the benefits of this law because he was temporarily abiding elsewhere when it went into effect. Acting Secretary Hill to Mr. Lenderink, April 29, 1901, For. Rel. 1901, p. 32. And Attorney General Knox (24 Ops. Atty. Gen. 40) held that a native Porto Rican temporarily living in France, who was not in Porto Rico on April 11, 1899, is, under § 7 of the act of April 12, 1900 (31 Stat. at L. 79), a citizen of Porto Rico.

At the date of the passage of the act of April 12, 1900, the law of the United States (Rev. Stat. § 4076, U. S. Comp. Stat. 1901, p. 2765) prohibited the granting or verification of passports to or for any persons other than citizens of the United States. The act of June 14, 1902 (32 Stat. at L. 386, chap. 1088), however, amended this section so as to make it read: "No passport shall be granted or issued to, or verified for, any

other persons than those owing allegiance, whether citizens or not, to the United States." Under this law as amended passports are now issued to citizens of Porto Rico and the Philippine islands.

Seamen born in the Philippine islands, being persons whose civil and political status is, by the treaty of peace with Spain, declared to be a matter for future determination by Congress, are not citizens of the United States within the meaning of any statute concerning seamen or any other statute or law of the United States. 23 Ops. Atty. Gen. 400.

70. Treaties with Indians.— Certain Indian tribes, or such members thereof as chose to remain behind on the removal of their tribes westward, have been declared to be citizens, and individuals of the particular tribes have been authorized to become citizens on application to a court of the United States for naturalization, and satisfactory proof of fitness for civilized life. See treaties in 1817 and 1835 with the Cherokees (7 Stat. at L. 159, 483); and in 1820, and 1830, with the Choc-taws (7 Stat. at L. 211, 335); in 1855 with the Wyandotts (10 Stat. at L. 1159); in 1861 and 1866 with the Pottawatomies (12 Stat. at L. 1192 and 14 Stat. at L. 763); in 1862 with the Ottawas (12 Stat. at L. 1237), and the Kickapoos (13 Stat. at L. 624). See also treaties with the Stockbridge Indians in 1848 and 1856 (9 Stat. at L. 955, and 11 Stat. at L. 663).

The act of Congress of March 3, 1871 (16 Stat. at L. 566, chap. 120, Rev. Stat. § 2079), required that the Indian tribes should be dealt with for the future through the legislative, and not through the treaty-making power. The provision is as follows: "Hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty."

CHAPTER V.

NATURALIZATION BY CONQUEST.

71. General doctrine.

72. American *ante-nati*.

71. General doctrine.— By the general principles of the law of nations, every sovereign government has, as an inherent attribute, the power to acquire territory by conquest. In the absence of stipulations upon the subject, wherever a government acquires territory by conquest the relation of the conquered territory to the new government is to be determined by the conquering state.

“The Constitution [of the United States] confers absolutely on the government of the Union the powers of making war, and of making treaties; consequently that government possesses the power of acquiring territory, either by conquest or by treaty. The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed; either on the terms stipulated in the treaty of cession, or on such as its new master shall impose.” *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L. ed. 242.

In the absence of express treaty stipulations or legislation by the conqueror, the relations between the conquered and the conqueror are determined by the law of nations, which establishes

the general rule that the allegiance of the conquered is transferred to the new sovereign. 2 Halleck, International Law, 485.

Upon the conquest of a country the allegiance due by birth from its citizens or subjects to its sovereign passes, by operation of law, to the conqueror; who, as sovereign *de facto*, has a right to the allegiance of all who are subject to his power and submit to the protection of his arms. *Inglis v. Sailor's Snug Harbour*, 3 Pet. 156, 7 L. ed. 637.

As is clearly indicated in the opinion of the Supreme Court of the United States in the *Insular Cases* (*Naturalization by treaty*, chapter IV., *ante*), the acquisition of territory by conquest by the United States does not operate to incorporate the inhabitants of the conquered territory as citizens of the conquering state; and where the treaty of cession, which follows the conquest, contains provisions against such incorporation, incorporation does not take place until the legislative power deems it wise to provide for it.

(See previous chapter for a full discussion of the question.)

72. American ante-nati.—It is universally admitted, both in English courts and in those of our own country, that all persons born within the colonies of North America while subject to the Crown of Great Britain were natural-born British subjects, and it must necessarily follow that that character was changed by the separation of the colonies from the parent state, and the acknowledgment of their independence.

The rule as to the point of time at which the American *ante-nati* ceased to be British subjects differs in this country and in England, as established by the courts of justice in the respective countries. The English rule is to take the date of the Treaty of Peace, in 1783. Our rule is to take the date of the Declaration of Independence. The settled doctrine of this country is that a

person born here, who left the country before the Declaration of Independence, and never returned here, became thereby an alien. *Inglis v. Sailor's Snug Harbour*, 3 Pet. 99, 7 L. ed. 617.

By withdrawing from this country, and adhering to the British government, the *ante-nati* lost, or, perhaps, more properly speaking, never acquired, the character of American citizens. *Ibid.*

All white persons, or persons of European descent, who were born in any of the colonies, or resided or had been adopted there, before 1776, and had adhered to the cause of independence up to July 4, 1776, were, by the Declaration, invested with the privileges of citizenship. *Id.* 3 Pet. 164, 7 L. ed. 640.

(See pp. 165, 173-176, 180-184, *ante.*)

CHAPTER VI.

NATURALIZATION BY SPECIAL ACT OF CONGRESS.

- 73. In general.
- 74. On the acquisition of the territory of Oregon.
- 75. On the annexation of Hawaii.
- 76. Readmission of Nellie Grant Sartoris to citizenship.
- 77. Naturalization of Indians.

73. In general.— There are numerous instances of naturalization by special statute.

The act of April 14, 1802 (see ¶ 5, Rev. Stat. § 2165, U. S. Comp. Stat. 1901, p. 1330), provided for the admission of aliens who were residing in the United States before January 29, 1795, upon proof of two years' residence in this country.

The act of March 22, 1816 (see ¶ 6, Rev. Stat. § 2165, U. S. Comp. Stat. 1901, p. 1330), provided for the admission, without previous declaration of intention, of aliens who had resided in the United States between June 18, 1798, and June 18, 1812.

74. On the acquisition of the territory of Oregon.— The acquisition of the territory of Oregon led to the enactment of another special law extending citizenship to persons born therein. The act of Congress of May 18, 1872 (Rev. Stat. § 1995, U. S. Comp. Stat. 1901, p. 1268), provided that "all persons born in the district of country formerly known as the territory of Oregon, and subject to the jurisdiction of the United States on the 18th of May, 1872, are citizens in the same manner as if born elsewhere in the United States."

75. On the annexation of Hawaii.— The annexation of Ha-

waii was followed by the enactment of the law of April 30, 1900 (31 Stat. at L. 141, chap. 339), "providing a government for the territory of Hawaii," § 4 of which declares that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are citizens of the United States and citizens of the territory of Hawaii.

Ng Faun, a subject of China, was admitted to citizenship in the Kingdom of Hawaii in 1892 and was a citizen of Hawaii on August 12, 1898. In 1901 he made application to the Department of State for a passport as a citizen of the United States. The Attorney General, to whom the Secretary of State referred the question whether Ng Faun was a citizen of the United States, quoted the language of § 4 of the act of April 30, 1900 (31 Stat. at L. 141, chap. 339), "that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are hereby declared to be citizens of the United States and citizens of the territory of Hawaii," and held that this comprehensive language included Chinese citizens of Hawaii. A passport was accordingly issued to Ng Faun. 23 Ops. Atty. Gen. 509. See also 23 Ops. Atty. Gen. 345 and 352, in which it was held that any Chinese person who was a citizen of the Republic of Hawaii on August 12, 1898, and who has not since abandoned, or been legally deprived of, his citizenship, is a citizen of the United States.

76. Readmission of Nellie Grant Sartoris to citizenship.—And in 1898, Congress, by joint resolution, readmitted to citizenship Nellie Grant Sartoris, the daughter of General U. S. Grant, who had married a British subject, and who, upon the death of her husband, returned to the United States to reside. See § 56, *supra*.

77. Naturalization of Indians.—In the same way many classes of Indians have been made citizens of the United States. By

the act of March 3, 1843, it was provided that, on the completion of certain arrangements for the partition of the lands of the tribe among its members, the Stockbridge tribe of Indians, and each and every of them, shall be deemed to be citizens of the United States, to all intents and purposes, and entitled to all the rights, privileges, and immunities of such citizens. 5 Stat. at L. 647, chap. 101.

The act of July 15, 1870 (16 Stat. at L. 361, chap. 296), provided that if at any time thereafter any of the Winnebago Indians in the state of Minnesota should desire to become citizens of the United States they should make application to the district court of the United States for the district of Minnesota, and in open court make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens; and should also make proof, to the satisfaction of the court, that they were sufficiently intelligent and prudent to control their affairs and interests; that they had adopted the habits of civilized life, and had, for at least five years before, been able to support themselves and their families; and thereupon they should be declared by the court to be citizens of the United States, the declaration should be entered of record, and a certificate thereof given to the applicant.

By the act of March 3, 1873 (17 Stat. at L. 632, chap. 332), a similar provision was made for the naturalization of any adult member of the Miami tribe in Kansas, and of his minor children.

Some of the Sioux tribes, and the Brothertown Indians, have also been granted citizenship by special acts of Congress.

The act of February 8, 1887 (24 Stat. at L. 390, chap. 119, § 6), providing for the allotment of lands in severalty to Indians on the various reservations, and extending the protection of the laws of the United States and the territories over the Indians,

etc., is very sweeping in its terms, making every Indian situated as therein referred to a citizen of the United States. It reads as follows: "Every Indian born within the territorial limits of the United States, to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States."

An Indian to whom land has been allotted in severalty becomes a citizen of the United States, with all the rights, privileges, and immunities of such, including the right to sue in the proper forum. *Re Celestine*, 114 Fed. 551.

The act of May 2, 1890, provided that "any member of any Indian tribe or nation residing in the Indian territory may apply to the United States court therein to become a citizen of the United States, and such court shall have jurisdiction thereof, and shall hear and determine such application, as provided in the statutes of the United States." 26 Stat. at L. 99, chap. 182, § 43.

CHAPTER VII.

NATURALIZATION BY ADMISSION OF TERRITORY TO STATEHOOD.

78. In general.

79. Louisiana.

80. States carved out of Northwest Territory; in general.

81. — Ohio, Indiana, and Illinois.

82. — Michigan.

83. Florida.

84. Texas.

85. Nebraska.

78. In general.—Section 3 of article 4 of the Constitution provides that “new states may be admitted by the Congress into this Union;” and the second paragraph of the same section declares that “the Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States.”

So far as the original states were concerned, all those who were citizens of such states became, upon the formation of the Union, citizens of the United States. As remarked by Mr. Chief Justice Waite in *Minor v. Happersett*, 21 Wall. 162, 167, 22 L. ed. 627, 628: “Whoever, then, was one of the people of either of these states when the Constitution of the United States was adopted, became, *ipso facto*, a citizen,—a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt.”

79. Louisiana.—By article 3 of the treaty of Paris of 1803 (8 Stat. at L. 202) it was provided that “the inhabitants of the

ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

It was said by Mr. Justice Catron, in his separate opinion in *Scott v. Sandford*, 19 How. 393, 525, 15 L. ed. 691, 750: "The settled doctrine in the state courts of Louisiana is, that a French subject coming to the Orleans territory, after the treaty of 1803 was made, and before Louisiana was admitted into the Union, and being an inhabitant at the time of the admission, became a citizen of the United States by that act; that he was one of the inhabitants contemplated by the 3d article of the treaty, which referred to all inhabitants embraced within the new state on its admission. That this is the true construction I have no doubt."

In *Desbois's Case*, 2 Mart. (La.) 185 (decided in 1812), one Desbois, of French birth, applied for a license to practise as a counsellor and attorney at law in the superior courts of Louisiana, and by one of the rules of the court the applicant could not be admitted unless he was a citizen of the United States. Desbois conceded that he had no claim to citizenship by birth, nor by naturalization under the acts of Congress to establish an uniform rule on that subject, but he contended that there was a third mode of acquiring citizenship of the United States, namely, the admission into the Union of a state of which he was a citizen. He contended that, as he had, in the year 1806, removed to, and settled with his family in, the city of New Orleans in the territory of Orleans, in contemplation of the enjoyment of the advantages which the laws of the territory and of

the United States held out to foreigners removing into that territory, and had ever since considered it as his adopted country, he had become a citizen under the act of Congress of March 2, 1805 (2 Stat. at L. 322, chap. 23), further providing for the territorial government of Orleans, the enabling act of February 20, 1811 (2 Stat. at L. 641, chap. 21), and that of April 8, 1812 (2 Stat. at L. 701, chap. 50), admitting the state.

Judge Martin, who delivered the opinion of the court, referred, among other things, to the fact that the act of Congress authorizing the formation of the state government of Louisiana was almost literally copied from that which authorized that of Ohio, and, pointing out that by the 1st section of the latter statute the inhabitants of the designated territory were authorized to form for themselves a state constitution, while by the 4th section the persons entitled to vote for members of the convention were described as, first, all male citizens of the United States, and next, all persons having in all other respects the legal qualifications to vote for members of the general assembly of the territory, which were a freehold of 50 acres of land in the district, and citizenship of one of the states, and residence in the district, or the like freehold and two years' residence in the district, said: "The word 'inhabitants,' in the 1st section of this act, must be taken *lato sensu*; it cannot be restrained so as to include citizens of the United States only; for other persons are afterwards called upon to vote. There is not any treaty, or other instrument, which may be said to control it. Every attempt to restrict it must proceed on principles absolutely arbitrary. If the word is to be taken *lato sensu* in the act passed in favor of the people of one territory, is there any reason to say that we are to restrain it in another act, passed for similar purposes, in favor of the people of another territory?" Id. pp. 192, 193.

His conclusion was that the applicant must be considered a

citizen of the state of Louisiana, and entitled to all the rights and privileges of a citizen of the United States.

In 1813, in *United States v. Laverty*, 3 Mart. (La.) 733, Judge Hall of the district court of the United States held that the inhabitants of the territory of Orleans became citizens of Louisiana and of the United States by the admission of Louisiana into the Union; denied that the only constitutional mode of becoming a citizen of the United States is naturalization by compliance with the uniform rule established by Congress; and fully agreed with the decision in *Desbois's Case*, which he cited.

In an Alabama case, it was held, however, that an alien moving into the territory of Louisiana after it was ceded to the United States, and residing there until after its admission into the Union, as a state, does not thereby become a citizen of the United States. *State v. Primrose*, 3 Ala. 546.

80. States carved out of Northwest Territory; in general.—By the ordinance for the government of the Northwest Territory, of July 13, 1787 (1 Stat. at L. 51), it was provided that, as soon as there should be 5,000 free male inhabitants of full age in the district thereby constituted, they were to receive authority to elect representatives to a general assembly, and the qualifications of a representative in such cases were previous citizenship of one of the United States for three years and residence in the district, or a residence of three years in the district and a fee-simple estate of 200 acres of land therein. The qualifications of electors were a freehold in 50 acres of land in the district, previous citizenship of one of the United States, and residence, or the like freehold, and two years' residence in the district. And it was also provided that there should be formed in the territory not less than three, nor more than five, states, with certain boundaries, and that, whenever any such state should contain 60,000 free inhabitants, such state should be admitted by its

delegates in Congress on an equal footing with the original states in all respects whatever, and should be at liberty to form a permanent constitution and state government, provided it should be republican and in conformity with the articles of compact. 1 Stat. at L. 51*a*, chap. 8; Rev. Stat. 2d ed. Organic Laws, pp. 13, 14.

81. — **Ohio, Indiana, and Illinois.**—Reference to the various acts of Congress creating the Indiana and Illinois territories (2 Stat. at L. 58, chap. 41; 2 Stat. at L. 514, chap. 13); the enabling acts under which the state governments of Ohio, Indiana, and Illinois were formed (2 Stat. at L. 173, chap. 40; 3 Stat. at L. 289, chap. 57; 3 Stat. at L. 428, chap. 67); and the act recognizing and resolutions admitting those states (2 Stat. at L. 201, chap. 7; 3 Stat. at L. 399; 3 Stat. at L. 536); and to their original constitutions,—establishes that the inhabitants or people who were empowered to take part in the creation of these new political organisms, and who continued to participate in the discharge of political functions, included others than those who were originally citizens of the United States. And that the action of Congress was advisedly taken is put beyond doubt by the language used in the legislation in question.

82. — **Michigan.**—In case of the admission of Michigan this was strikingly shown. By the act of Congress of January 11, 1805 (2 Stat. at L. 309, chap. 5), a part of the Indiana territory was constituted the territory of Michigan, and a government in all respects similar to that provided by the ordinance of 1787 (1 Stat. at L. 51*a*, chap. 8) was established. The act of February 16, 1819 (3 Stat. at L. 482, chap. 22), authorized that territory to send a delegate to Congress, and conferred the right of suffrage on the free white male citizens of the territory who had resided therein one year next preceding the election, and had paid county or territorial taxes. The act of March 3, 1823

(3 Stat. at L. 769, chap. 36), provided that all citizens of the United States having the qualifications prescribed by the act of February 16, 1819, should be entitled to vote and be eligible to office. By an act of the territorial legislature of January 26, 1835, the free white male inhabitants of the territory, of full age, who had resided therein three months preceding "the 4th day of April next in the year 1835," were authorized to choose delegates to form a constitution and state government. Mich. Laws 1835, pp. 72, 75. Delegates were elected accordingly, and a constitution completed January 29, 1835, and ratified by a vote of the people November 2, 1835, which provided that every white male citizen above the age of twenty-one years, who had resided in the state six months next preceding any election, should be entitled to vote at any election, "and every white male inhabitant of the age aforesaid, who may be a resident of the state at the time of the signing of this Constitution, shall have the right of voting as aforesaid." 1 Charters and Constitutions, 983, 984. This Constitution was laid before Congress by President Jackson in a special message December 9, 1835, and a bill was introduced for the admission of Michigan into the Union. While this was under consideration an amendment to the provision that on the assent being given by a convention of the people of Michigan to certain boundaries defined in the bill, the state should be admitted, to strike out the words, "people of the said state," and insert, "by the free male white citizens of the United States over the age of twenty-one years, residing within the limits of the proposed state," was voted down; as was also another amendment proposing to insert after that part of the bill which declared the Constitution of the new state ratified and confirmed by Congress the words, "except that provision of said Constitution by which aliens are permitted to enjoy the right of suffrage." The act was passed June 15, 1836 (5 Stat. at L.

49, chap. 99), and, the conditions imposed having been first rejected and then finally accepted, the state was admitted into the Union by the act of January 26, 1837 (5 Stat. at L. 144, chap. 6).

In all these instances citizenship of the United States in virtue of the recognition by Congress of the qualified electors of the state as citizens thereof was apparently conceded, and it was the effect in that regard that furnished a chief argument to those who opposed the admission of Michigan. As to that state, the state Constitution of 1850, as amended in 1870, preserved the rights as an elector of "every male inhabitant, residing in the state on the 24th day of June, 1835." And in *Atty. Gen. ex rel. Conely v. Detroit*, 78 Mich. 545, 563, 7 L. R. A. 99, 18 Am. St. Rep. 458, 44 N. W. 338, the supreme court of Michigan assigned, as one of the reasons for holding the registry law under consideration invalid, that no provision was therein made for this class of voters, nor for the inhabitants who had resided in Michigan in 1850, and declared their intention to become citizens of the United States, who had the right to vote under the Constitution of 1850.

83. Florida.—The 6th article of the treaty of 1819 with Spain (8 Stat. at L. 256) contained a provision to the same effect as that in the treaty of Paris (8 Stat. at L. 200), and Mr. Chief Justice Marshall said (*American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 542, 7 L. ed. 242, 255): "This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the government, till Florida shall become a state. In the meantime, Florida continues to be a territory of the United States;

governed by virtue of that clause in the Constitution which empowers Congress 'to make all needful rules and regulations, respecting the territory, or other property belonging to the United States.' "

At the second session of the 27th Congress, in the case of David Levy, who had been elected a delegate from the territory of Florida, where it was alleged that he was not a citizen of the United States, it was held by the House Committee of Elections that "it matters nothing whether the naturalization be effected by act of Congress, by treaty, or by the admission of new states; the provision is alike applicable."

The question turned on whether Mr. Levy's father was an inhabitant of Florida at the time of its transfer to the United States, as the son admitted that he was not a native-born citizen of the United States, but claimed citizenship through that of his father effected by the treaty while he was a minor. The argument of the report in support of the position that "no principle has been more repeatedly announced by the judicial tribunals of the country, and more constantly acted upon, than that the leaning, in questions of citizenship, should always be in favor of the claimant of it," and that liberality of interpretation should be applied to such a treaty, is well worthy of perusal. Contested elections 1834, 1835, 2d Session, 38th Congress, 41.

84. Texas.—By the annexation of Texas, under a joint resolution of Congress of March 1, 1845, and its admission into the Union on an equal footing with the original states, December 29, 1845, all the citizens of the former republic* became, without

*"The citizens of Texas thus adopted into the citizenship of the United States were of three classes.

"1. Persons who came within the following description in § 10 of the general provisions of the Constitution of the Republic of Texas [*viz.*]: 'All persons (Africans, the descendants of Africans, and Indians excepted) who were residing in Texas on the day of the Declaration of Independence

any express declaration, citizens of the United States. 5 Stat. at L. 798; 9 Stat. at L. 108; *McKinney v. Saviego*, 18 How. 235, 15 L. ed. 365; *Cryer v. Andrews*, 11 Tex. 170; *Barrett v. Kelly*, 31 Tex. 476; *Carter v. Territory*, 1 N. M. 317; 13 Ops. Atty. Gen. 397.

Chief Justice Fuller, in delivering the opinion in *Boyd v. Nebraska*, 143 U. S. 168, 36 L. ed. 112, 12 Sup. Ct. Rep. 375, freely quoted above, said: "It is too late at this day to question the plenary power of Congress over the territories. As observed by Mr. Justice Matthews, delivering the opinion of the court in *Murphy v. Ramsey*, 114 U. S. 15, 44, 29 L. ed. 47, 57, 5 Sup. Ct. Rep. 747: 'It rests with Congress to say whether, in a given case, any of the people, resident in the territory, shall participate in the election of its officers, or the making of its laws; and it may, therefore, take from them any right of suffrage it may previously have conferred, or at any time modify or abridge it as it may deem expedient. The right of local self-government, as known to our system as a constitutional fran-

[March 2, 1836] shall be considered citizens of the Republic, and entitled to all the privileges as such;' and who did not forfeit their citizenship by the acts defined in the 8th section of said provisions, which is in the words following: 'All persons who shall leave the country for the purpose of evading a participation in the present struggle [the war between Texas and Mexico for Texan independence], or who shall refuse to participate in it, or shall give aid or assistance to the present enemy, shall forfeit all rights of citizenship and such lands as they may hold in the Republic. . . .'

"2. Persons born in that Republic during its independence,—that is, between the dates of March 2, 1836, and December 29, 1845.

"3. Persons naturalized in the Republic of Texas.

"The provision for naturalization in that Republic was § 6 of the general provisions of the Constitution [of Texas], and in the words following: 'All free white persons who shall emigrate to this Republic, and who shall, after a residence of six months, make oath before some competent authority that they intend to reside permanently in the same, and shall swear to support this Constitution, and that they will bear true allegiance to the Republic of Texas, shall be entitled to all the privileges of citizenship.'" 13 Ops. Atty-Gen. 397.

chise, belongs, under the Constitution, to the states and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the government of the United States was expressly reserved. The personal and civil rights of the inhabitants of the territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, state and national; their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States. . . . If we concede that this discretion in Congress is limited by the obvious purposes for which it was conferred, and that those purposes are satisfied by measures which prepare the people of the territories to become states in the Union, still the conclusion cannot be avoided, that the act of Congress here in question is clearly within that justification.'

"Congress having the power to deal with the people of the territories in view of the future states to be formed from them, there can be no doubt that, in the admission of a state, a collective naturalization may be effected in accordance with the intention of Congress and the people applying for admission.

"Admission on an equal footing with the original states, in all respects whatever, involves equality of constitutional right and power, which cannot thereafterwards be controlled; and it also involves the adoption, as citizens of the United States, of those whom Congress makes members of the political community, and who are recognized as such in the formation of the new state with the consent of Congress."

When a state is admitted into the Union upon an equal footing with the original states, all residents thereof who are endowed by Congress with political rights and privileges, or who, with the consent of Congress, are permitted to participate in the

formation of the new state, become citizens of the United States by adoption, even though, being foreigners, they have never complied with the requirements of the naturalization laws. *Boyd v. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375.

85. Nebraska.— The Nebraska enabling act (13 Stat. at L. 47, chap. 59) declared that all persons qualified to vote for representatives of the territorial legislature should be eligible to election as members of the convention, and should be entitled to vote upon the acceptance or rejection of the Constitution. By the existing laws of the territory, foreigners who had declared an intention to become citizens of the United States were entitled to vote at elections, and this provision was carried into the Constitution of the new state, as ratified by Congress. The Supreme Court of the United States held in *Boyd v. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375, that upon the admission of the state into the Union, all persons of this class became citizens of the United States.

A citizen of France, a resident and inhabitant of the territory of Nebraska, who had declared his intention to become a citizen of the United States, became a citizen of the United States upon the admission of Nebraska into the Union as a state. *Bahuaud v. Bize*, 105 Fed. 485.

PART III.

PASSPORTS.

PART III.

PASSPORTS.

CHAPTER I.

STATUTES AND RULES AND REGULATIONS GOVERNING THE ISSUANCE OF PASSPORTS.

86. In general.

87. Rules and regulations governing the granting and issuance of passports, prescribed by the President.

88. Forms.

86. In general.—The American passport is a document issued by the Secretary of State, or under his authority by a diplomatic or consular officer of the United States abroad (or by an executive officer of the insular possessions of the United States), to a citizen of the United States (or to a person owing allegiance to the United States), stating his citizenship (or status), and requesting for him free passage and all lawful aid and protection during his travels in foreign lands. See American Passport, p. 4.

Until the passage of the act of Congress of June 14, 1902 (32 Stat. at L. 386, chap. 1088), amending the statutes of the United States so as to permit the granting of passports to residents of the insular possessions of the United States, passports were only issued to citizens of the United States. The sections of the Revised Statutes, as amended, which govern the subject, are as follows:

“Sec. 4075 [U. S. Comp. Stat. 1901, p. 2764]. The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and by such chief or other executive officer of the insular possessions of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States; and no other person shall grant, issue, or verify any such passport. Where a legation of the United States is established in any country no person other than the diplomatic representative of the United States at such place shall be permitted to grant or issue any passport, except in the absence therefrom of such representative.

“Sec. 4076 [U. S. Comp. Stat. 1901, p. 2765]. No passport shall be granted or issued to, or verified for, any other persons than those owing allegiance, whether citizens or not, to the United States.

“Sec. 4077 [U. S. Comp. Stat. 1901, p. 2765]. All persons who shall be authorized to grant, issue, or verify passports shall make return of the same to the Secretary of State, in such manner and as often as he shall require; and such returns shall specify the names and all other particulars of the persons to whom the same shall be granted, issued, or verified, as embraced in such passports.

“Sec. 4078 [U. S. Comp. Stat. 1901, p. 2766]. If any person acting, or claiming to act, in any office or capacity, under the United States, its possessions, or any of the states of the United States, who shall not be lawfully authorized so to do, shall grant, issue, or verify any passport or other instrument in the nature of a passport, to or for any person whomsoever, or if any consular officer who shall be authorized to grant, issue, or verify passports shall knowingly and wilfully grant, issue, or verify

any such passport to or for any person not owing allegiance, whether a citizen or not, to the United States, he shall be imprisoned for not more than one year, or fined not more than five hundred dollars, or both; and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody."

An excellent historical sketch of the American passport, together with a digest of the laws, rulings, and regulations governing its issuance by the Department of State, was prepared by Mr. Gaillard Hunt, chief of the Passport Bureau, and published by the government printing office in 1898, under the title of "The American Passport."

87. Rules and regulations governing the granting and issuance of passports, prescribed by the President.—The following are the existing rules and regulations governing the granting of passports, prescribed by the President:

Rules Governing the Granting and Issuing of Passports in the United States.

1. By whom issued.—No one but the Secretary of State may grant and issue passports in the United States. Rev. Stat. §§ 4075, 4078 [U. S. Comp. Stat. 1901, pp. 2764, 2766].

A person who is entitled to receive a passport if temporarily abroad should apply to the diplomatic representative of the United States in the country where he happens to be; or, in the absence of a diplomatic representative, to the consul general of the United States; or, in the absence of both, to the consul of the United States. The necessary statements may be made before the nearest consular officer of the United States.

Application for a passport by a person in one of the insular possessions of the United States should be made to the chief executive of such possession.

(The evidence required of a person making application abroad or in an insular possession of the United States is the same as that required of an applicant in the United States.)

2. To whom issued.—The law forbids the granting of a passport to any person who does not owe allegiance to the United States.

A person who has only made the declaration of intention to become a citizen of the United States cannot receive a passport.

3. Applications.—A person who is entitled to receive a passport, if within the United States, must make a written application, in the form of an affidavit, to the Secretary of State.

The affidavit must be attested by an officer authorized to administer oaths, and if he has an official seal it must be affixed. If he has no seal, his official character must be authenticated by certificate of the proper legal officer.

If the applicant signs by mark, two attesting witnesses to his signature are required.

The applicant is required to state the date and place of his birth, his occupation, and the place of his permanent residence, and to declare that he goes abroad for temporary sojourn, and intends to return to the United States with the purpose of residing and performing the duties of citizenship therein.

The applicant must take the oath of allegiance to the government of the United States.

The application must be accompanied by a description of the person applying, and should state the following particulars, *viz.*: Age, —; stature, — feet — inches (English measure); forehead, —; eyes, —; nose, —; mouth, —; chin, —; hair, —; complexion, —; face, —.

The application must be accompanied by a certificate from at least one credible witness that the applicant is the person he represents himself to be, and that the facts stated in the affidavit are true to the best of the witness's knowledge and belief.

4. Native citizens.—An application containing the information indicated by rule 3 will be sufficient evidence in the case of native citizens; but a person of the Chinese race, alleging birth in the United States, must accompany his application with supporting affidavits from at least two credible witnesses, preferably not of the Chinese race, having personal knowledge of the applicant's birth in the United States.

5. A person born abroad, whose father was a native citizen of the United States.—In addition to the statements required by rule 3, his application must show that his father was born in the United States, resided therein, and was a citizen at the time of the applicant's birth. The Department may require that this affidavit be supported by that of one other citizen acquainted with the facts.

6. Naturalized citizens.—In addition to the statements required by rule 3, a naturalized citizen must transmit his certificate of naturalization, or a duly certified copy of the court record thereof, with his application. It will be returned to him after inspection. He must state in his affidavit when and from what port he emigrated to this country, what ship he sailed in, where he has lived since his arrival in the United States, when and before what court he was naturalized, and that he is the identical person described in the certificate of naturalization. The signature to the application should conform in orthography to the applicant's name as written in his certificate of naturalization.

7. Woman's application.—If she is unmarried, in addition to the statements required by rule 3, she should state that she has never been married. If she is the wife of a native citizen of the United States the fact should be made to appear in her application. If she is the wife or widow of a naturalized citizen, in addition to the statements required by rule 3, she must trans-

mit for inspection her husband's certificate of naturalization, must state that she is the wife (or widow) of the person described therein, and must set forth the facts of his emigration, naturalization, and residence, as required in the rule governing the application of a naturalized citizen.

(A married woman's citizenship follows that of her husband so far as her international status is concerned. It is essential, therefore, that a woman's marital relations be indicated in her application for a passport, and that in the case of a married woman her husband's citizenship be established.)

8. The child of a naturalized citizen claiming citizenship through the naturalization of the parent.—In addition to the statements required by rule 3, the applicant must state that he or she is the son or daughter, as the case may be, of the person described in the certificate of naturalization, which must be submitted for inspection, and must set forth the facts of emigration, naturalization, and residence, as required in the rule governing the application of a naturalized citizen.

9. A resident of an insular possession of the United States, who owes allegiance to the United States.—In addition to the statements required by rule 3, he must state that he owes allegiance to the United States, and that he does not acknowledge allegiance to any other government; and must submit an affidavit from at least two credible witnesses having good means of knowledge in substantiation of his statements of birth, residence, and loyalty.

10. Expiration of passport.—A passport expires two years from the date of its issuance. A new one will be issued upon a new application, and, if the applicant be a naturalized citizen, the old passport will be accepted in lieu of a certificate of naturalization, if the application upon which it was issued is found to contain sufficient information as to the naturalization of the applicant.

11. Wife, minor children, and servants.—When the applicant is accompanied by his wife, minor children, or servant who would be entitled to receive a passport, it will be sufficient to state the fact, giving the respective ages of the children and the allegiance of the servant, when one passport will suffice for all. For any other person in the party a separate passport will be required. A woman's passport may include her minor children and servant under the above-named conditions.

(The term "servant" does not include a governess, tutor, pupil, companion, or person holding like relations to the applicant for a passport.)

12. Professional titles.—They will not be inserted in passports.

13. Fee.—By act of Congress approved March 23, 1888 [24 Stat. at L. 45, chap. 34], a fee of \$1 is required to be collected for every citizen's passport. That amount in currency or postal money order should accompany each application made by a citizen of the United States. Orders should be made payable to the disbursing clerk of the Department of State. Drafts or checks will not be accepted.

14. Blank forms of application.—They will be furnished by the Department to persons who desire to apply for passports, but are not furnished, except as samples, to those who make a business of procuring passports.

15. Address.—Communications should be addressed to the Department of State, Passport Bureau, and each communication should give the postoffice address of the person to whom the answer is to be directed.

16. Rejection of application.—The Secretary of State has the right in his discretion to refuse to issue a passport, and will exercise this right towards anyone who, he has reason to believe, desires it for an unlawful or improper purpose.

Section 4075 of the Revised Statutes of the United States [U. S. Comp. Stat. 1901, p. 2764], as amended by the act of Congress, approved June 14, 1902 [32 Stat. at L. 386, chap. 1088], providing that "the Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and by such chief or other executive officer of the insular possessions of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States," the foregoing rules are hereby prescribed for the granting and issuing of passports in the United States.

The Secretary of State is authorized to make regulations on the subject of issuing and granting passports additional to these rules and not inconsistent with them.

Theodore Roosevelt.

Oyster Bay, New York, September 12, 1903.

Rules Governing the Granting and Issuing of Passports in the Insular Possessions of the United States.

Section 4075 of the Revised Statutes of the United States [U. S. Comp. Stat. 1901, p. 2764], as amended by the act of Congress, approved June 14, 1902 [32 Stat. at L. 386, chap. 1088], providing that "the Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and by such chief or other executive officer of the insular possessions of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States," the following rules are hereby prescribed for the granting and issuing of passports in the insular possessions of the United States:

1. By whom issued.—Application for a passport by a person

in one of the insular possessions of the United States should be made to the chief executive of such possession.

A person who is entitled to receive a passport if temporarily abroad should apply to the diplomatic representative of the United States in the country where he happens to be; or, in the absence of a diplomatic representative, to the consul general of the United States; or, in the absence of both, to the consul of the United States. The necessary statements may be made before the nearest consular officer of the United States.

2. To whom issued.—The law forbids the granting of a passport to any person who does not owe allegiance to the United States.

A person who has only made the declaration of intention to become a citizen of the United States cannot receive a passport.

3. Applications.—A person who is entitled to receive a passport must make a written application in the form of an affidavit. The affidavit must be attested by an officer authorized to administer oaths, and if he has an official seal, it must be affixed. If he has no seal, his official character must be authenticated by certificate of the proper legal officer.

If the applicant signs by mark, two attesting witnesses to his signature are required.

The applicant is required to state the date and place of his birth, his occupation, and the place of his permanent residence, and to declare that he goes abroad for temporary sojourn and intends to return to the United States or one of the insular possessions of the United States with the purpose of residing and performing the duties of citizenship therein.

The applicant must take the oath of allegiance to the government of the United States.

The application must be accompanied by a description of the person applying, and should state the following particulars, *viz.* :

Age, ——; stature, —— feet —— inches; (English measure); forehead, ——; eyes, ——; nose, ——; mouth, ——; chin, ——; hair, ——; complexion, ——; face, ——.

The application must be accompanied by a certificate from at least one credible witness that the applicant is the person he represents himself to be, and that the facts stated in the affidavit are true to the best of the witness's knowledge and belief.

4. Native citizens of the United States.—An application containing the information indicated by rule 3 will be sufficient evidence in the case of native citizens of the United States.

5. A person born abroad, whose father was a native citizen of the United States.—In addition to the statements required by rule 3, his application must show that his father was born in the United States, resided therein, and was a citizen at the time of the applicant's birth. The Department may require that this affidavit be supported by that of one other citizen acquainted with the facts.

6. Naturalized citizens.—In addition to the statements required by rule 3, a naturalized citizen must transmit his certificate of naturalization, or a duly certified copy of the court record thereof, with his application. It will be returned to him after inspection. He must state in his affidavit when and from what port he emigrated to this country, what ship he sailed in, where he has lived since his arrival in the United States, when and before what court he was naturalized, and that he is the identical person described in the certificate of naturalization. The signature to the application should conform in orthography to the applicant's name as written in his certificate of naturalization.

7. Woman's application.—If she is unmarried, in addition to the statements required by rule 3, she should state that she has never been married. If she is the wife of a native citizen of

the United States the fact should be made to appear in her application. If she is the wife or widow of a naturalized citizen, in addition to the statements required by rule 3, she must transmit for inspection her husband's certificate of naturalization, must state that she is the wife (or widow) of the person described therein, and must set forth the facts of his emigration, naturalization, and residence, as required in the rule governing the application of a naturalized citizen.

8. The child of a naturalized citizen claiming citizenship through the naturalization of the parent.—In addition to the statements required by rule 3, the applicant must state that he or she is the son or daughter, as the case may be, of the person described in the certificate of naturalization, which must be submitted for inspection, and must set forth the facts of emigration, naturalization and residence, as required in the rule governing the application of a naturalized citizen.

9. A resident of an insular possession of the United States, who owes allegiance to the United States.—In addition to the statements required by rule 3, he must state that he owes allegiance to the United States, and that he does not acknowledge allegiance to any other government; and must submit an affidavit from at least two credible witnesses having good means of knowledge in substantiation of his statements of birth, residence, and loyalty.

10. Expiration of passport.—A passport expires two years from the date of its issuance. A new one will be issued upon a new application, and, if the applicant be a naturalized citizen, the old passport will be accepted in lieu of a certificate of naturalization, if the application upon which it was issued is found to contain sufficient information as to the naturalization of the applicant.

11. Wife, minor children, and servants.—When the applicant is accompanied by his wife, minor children, or servant who

would be entitled to receive a passport, it will be sufficient to state the fact, giving the respective ages of the children and the allegiance of the servant, when one passport will suffice for all. For any other person in the party a separate passport will be required. A woman's passport may include her minor children and servant under the above-named conditions.

12. Professional titles.—They will not be inserted in passports.

13. Rejection of application.—The chief executive officers of the insular possessions of the United States are authorized to refuse to issue a passport to anyone who, there is reason to believe, desires it for an unlawful or improper purpose, or who is unable or unwilling to comply with the rules.

Theodore Roosevelt.

Oyster Bay, New York, July 19, 1902.

88. Forms.—The blank forms of applications for passports by native and naturalized citizens of the United States are subjoined:

[FORM FOR NATIVE CITIZEN.]

No.....

Issued.....

UNITED STATES OF AMERICA.

STATE OF }
COUNTY OF } ss.

I,, a native and loyal citizen of the United States, hereby apply to the Department of State, at Washington, for a passport for myself, accompanied by as follows:, born at....., on the day of....., 18...., and.....
.....
.....
.....

I solemnly swear that I was born at....., in the State of, on or about theday of, 18..; that my father is a citizen of the United States; that I am domiciled in the United States, my permanent residence being at, in the State of....., where I follow the occupation of.....; that I am about to go abroad temporarily; and that I intend to return to the United States, with the purpose of residing and performing the duties of citizenship therein.

Oath of Allegiance.

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Sworn to before me this.....day

of....., 19

.....

Notary Public.

Description of Applicant.

Age:years.	Mouth:
Stature: ...feet, ...inches, Eng.	Chin:
Forehead:	Hair:
Eyes:	Complexion:
Nose:	Face:

Identification.

....., 19

I hereby certify that I know the above-named..... personally, and know him to be a native-born citizen of the

United States, and that the facts stated in his affidavit are true to the best of my knowledge and belief.

.....
[ADDRESS OF WITNESS.]

Applicant desires passport sent to following address

.....
.....
.....
[FORM FOR NATURALIZED CITIZEN.]

No.....

Issued.....

UNITED STATES OF AMERICA.

STATE OF }
COUNTY OF } ss.

I,, a naturalized and loyal citizen of the United States, hereby apply to the Department of State, at Washington, for a passport for myself, accompanied by..... as follows:
....., born at....., on the
.....day of....., 18...; and.....
.....
.....
.....

I solemnly swear that I was born at....., on or about the.....day of....., 18...; that I emigrated to the United States, sailing on board the from....., on or about the....day of....., 18...; that I resided..... years, uninterruptedly, in the United States, from..... to at.....; that I was naturalized as a citizen of the United States before the.....Court of at, on theday of

....., 19...., as shown by the accompanying Certificate of Naturalization; that I am the identical person described in said Certificate; that I am domiciled in the United States, my permanent residence being at....., in the State of, where I follow the occupation of.....; that I am about to go abroad temporarily; and that I intend to return to the United States....., with the purpose of residing and performing the duties of citizenship therein.

Oath of Allegiance.

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Sworn to before me thisday.....
of, 19...

.....

Notary Public.

Description of Applicant.

Age:years.	Mouth:
Stature: ...feet, ...inches, Eng.	Chin:
Forehead:	Hair:
Eyes:	Complexion:
Nose:	Face:

Identification.

I hereby certify that I know the above-named..... personally, and know h... to be the identical person referred to in the within-described Certificate of Naturalization, and that

the facts stated in h... affidavit are true to the best of my knowledge and belief.

.....
[ADDRESS OF WITNESS.]

Applicant desires passport sent to following address:

.....
.....
.....

Passports issued by the Secretary of State are in the following form:

[SEAL]

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern to permit, a citizen of the United States, safely and freely to pass, and in case of need to give all lawful aid and protection.

Description.

Age, years; stature, feet inches, Eng.; forehead,; eyes,; nose,; mouth,; chin,; hair,; complexion,; face,

Signature of the bearer,

.....

Given under my hand and the seal of the Department of State, at the city of Washington, the day of in the year 190....., and of the independence of the United States the one hundred and twenty-eighth.

No.

PART IV.
EXPATRIATION.

PART IV.

EXPATRIATION.

CHAPTER I.

RENUNCIATION OR ABANDONMENT OF CITIZENSHIP.

- 89. Right of expatriation.
- 90. How effected; in general.
- 91. Residence abroad.
- 92. Military or naval service in a foreign country.
- 93. Accepting public office in a foreign country.
- 94. Agents of American enterprises.
- 95. When residence abroad is due to ill health or financial condition.
- 96. Taking oath of allegiance to foreign powers.
- 97. Missionaries.
- 98. Residents in semi-barbarous country.
- 99. Resumption of nationality.

89. Right of expatriation.— Expatriation is the voluntary renunciation or abandonment of nationality and allegiance.

While the naturalization laws of the United States have from the beginning been based on the principle that the right to change one's allegiance is a natural and inherent right, there was considerable difference of opinion in this country, prior to 1868, on the question whether the English doctrine of perpetual allegiance obtained here. The right of a citizen to divest himself of his allegiance to the United States without the consent of the government was denied by able American jurists, but the political branch of this government has uniformly held that the

doctrine of indelible allegiance was not in force in the United States.

The question was definitely settled in this country by the act of Congress of July 27, 1868 (15 Stat. at L. 223, chap. 249), which declares that "the right of expatriation is a natural and inherent right of all people."

This act, which has been embodied in the Revised Statutes, reads as follows:

"Sec. 1999 [U. S. Comp. Stat. 1901, p. 1269]. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle, this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

"Sec. 2000 [U. S. Comp. Stat. 1901, p. 1270]. All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of persons and property which is accorded to native-born citizens.

"Sec. 2001 [U. S. Comp. Stat. 1901, p. 1270]. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the

President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress."

Treaties recognizing the right of expatriation, with various modifications in detail, were concluded between the United States and the North German Union (15 Stat. at L. 615), Bavaria (15 Stat. at L. 661), Baden (16 Stat. at L. 731), Württemberg (16 Stat. at L. 735), and Belgium (16 Stat. at L. 747), in 1868; with Hesse (16 Stat. at L. 743), and Sweden and Norway (17 Stat. at L. 809), in 1869; with Austria (17 Stat. at L. 833), and England (16 Stat. at L. 775), in 1870; and with Denmark (17 Stat. at L. 941), in 1872.

One of the chief causes of the War of 1812 between the United States and Great Britain was the rigor with which the latter government applied the doctrine of inalienable allegiance. British cruisers took from American vessels on the high seas naturalized American citizens of British origin, and impressed them for service in the royal navy, on the grounds that they were British subjects by birth, and that no forms gone through in America could divest them of their British nationality. This was vigorously resisted by the United States.

While the war did not settle this question, opinion in England gradually changed, and by the naturalization act of 1870 (33 & 34 Vict. 105, chap. 14), which shortly preceded the treaty with the United States, the old doctrine of the common law was aban-

done, and it was declared that "any British subject who has at any time before, or may at any time after, the passing of this act, when in any foreign state, and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject, and be regarded as an alien." See Lawrence, *Principles of International Law*, 196, 197.

90. How effected; in general.—The act of Congress of 1868 (15 Stat. at L. 223, chap. 249, U. S. Comp. Stat. 1901, p. 1269), does not define what steps must be taken by a citizen before it can be held that he has become denationalized. In fact, there is no mode of renunciation of citizenship prescribed by our laws. Whether expatriation has taken place in any case must be determined by the facts and circumstances of the particular case. No general rule that will apply to all cases can be laid down.

By whatever means a citizen assumes the status of a new citizenship, he must be deemed to have relinquished his former status.

Chief Justice Marshall, in *Murray v. The Charming Betsy*, 2 Cranch, 119, 2 L. ed. 226, said that when a citizen by his own act has made himself the subject of a foreign power, his situation is completely changed, and that the act certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance.

The most obvious and effective form of expatriation is by naturalization in another country. But this is not the only mode by which expatriation may be effected.

Rulings of the Executive in a number of concrete cases, which may be regarded as typical, are included in the following sections to show how and under what circumstances it has been held that expatriation has been accomplished.

91. Residence abroad.— In order to effect expatriation there must be a change of residence. “No person can make himself subject to another power while domiciled and resident within a country to which he owes allegiance,” said Secretary Fish to the President, August 25, 1873. For. Rel. 1873, pt. 2, p. 1187.

In *Comitis v. Parkerson*, 22 L. R. A. 148, 56 Fed. 556, where a woman, a native of Louisiana, married a subject of Italy and lived with her husband in Louisiana until his death, the latter never becoming naturalized, it was held that the widow, who continued to reside in the United States, was a citizen of the United States; that expatriation must be effected by removal from the country; and that, in the absence of an act of Congress authorizing it, there can be no implied renunciation of citizenship by an American woman marrying an alien.

While residence of a naturalized citizen of the United States in a foreign country is not sufficient evidence of expatriation, long continued residence abroad raises a presumption of abandonment of citizenship.

The presumption of law, with respect to residence in a foreign country, especially if it be protracted, is that the party is there “*animo manendi*,” and it lies upon him to explain it.

“A person may reside abroad for purposes of health, of education, of amusement, of business, for an indefinite period; he may acquire a commercial or a civil domicile there; but, if he does so sincerely and *bona fide animo revertendi*, and does nothing inconsistent with his pre-existing allegiance, he will not thereby have taken any step towards self-expatriation. But if, instead of this, he permanently withdraws himself and his property, and places both where neither can be made to contribute to the national necessities, acquires a political domicile in a foreign country, and avows his purpose not to return, he has placed himself in the position where his country has the right to presume

that he has made his election of expatriation." Secretary Fish to the President, For. Rel. 1873, pt. 2, pp. 1188, 1189.

"It not infrequently happens that naturalization is almost immediately followed by the return of the naturalized person to his native country, and his continued residence there, without having acquired property or established any permanent relations of family or of business in the United States. Again, cases are of frequent occurrence of naturalized persons who have resided for years in the country of nativity, manifesting no purpose of returning to the United States and exhibiting no interest in the government, but who assert American citizenship only when called upon to discharge some duty in the country of their residence; thus making the claim to American citizenship the pretext for avoiding duties to one country, while absence secures them from duties to the other. These are among the class of cases where the continued residence in the country of nativity, and the absence of apparent purpose of returning, may be taken at least as *prima facie* evidence of expatriation." *Id.* For. Rel. 1873, pt. 2, p. 1191.

Voluntary expatriation by a naturalized citizen, which forfeits a right to diplomatic intervention, may be inferred from a long residence abroad in the place of his birth, by nonpayment of taxes and nonpossession of property in this country, and by failure to express an intention to return. 2 Wharton, International Law Dig. p. 368.

Persons voluntarily emigrating from the United States to take up a permanent abode in a foreign land "cease to be citizens of the United States, and can have, after such a change of allegiance, no claims to protection as such citizens from our government." 2 Wharton, International Law Dig. p. 447.

The theory and practice of this government proceed upon the principle that citizenship involves duties and obligations as

well as rights, and an evasion of the duties and obligations by continued residence abroad works a forfeiture of the right to protection from the authorities of the United States. Mr. Fish to Mr. Niles, MSS. Dom. Let., October 30, 1871; Mr. Evarts to Mr. Logan, March 9, 1881, MSS. Inst. to Cent. America.

In determining whether expatriation has taken place in any given case, the intent of the party or absence of intent to return to the United States is a very material element.

As indicated above, in several of the naturalization treaties of the United States with other countries the residence of a naturalized citizen in the land of his nativity, without intent to return to the United States, is declared to work of itself a renunciation of the citizenship acquired by such naturalization, and such intent may be held to exist when the residence continues for more than two years.

The adoption of this period of two years as that when the intent not to return to the United States may be held to exist on the part of the naturalized citizen who has returned to his native country indicates that, while the principle on which rests the right of protection while in foreign countries of the naturalized is the same with that of the native-born citizen, there is an appreciation of the strong proclivity to resume his original citizenship, on the part of him who, having wandered from home, returns to find the attractions of early associations and of family ties enticing him at a period, perhaps, when the restlessness and spirit of adventure of the fresher years of life have passed, to rest and to end his days amid the scenes of his childhood or youth, and among those who claim the strong ties of common blood. Hence, probably, even when not regulated by treaty, the evidence would be more readily obtained to determine that a naturalized citizen who had returned to the country of his nativity should be deemed to have expatriated himself,—or, per-

haps, it would be more proper to say, to have rehabilitated himself with his original citizenship,—than to show that a native-born citizen had expatriated himself by the same period of foreign residence. Secretary Fish to the President, August 25, 1873.

Under the provision in the naturalization treaty with the North German Confederation, that the “intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country,” it is held that the two years’ residence is morely *prima facie* evidence of abandonment of nationality, and may be rebutted. 2 Wharton, International Law Dig. p. 379.

While the intent to remain in the country of birth may be held to exist after two years’ continuous residence, it is in reality not so held without special circumstances showing, either an intent to remain permanently, or the absence of all intent to return to the United States. *Ibid.*

A naturalized citizen may forfeit his citizenship before the two years mentioned in the treaties have elapsed. When a citizen of the United States goes abroad without any intention to return, he forfeits, with the abandonment of his country, all right to the protection of its government. 2 Wharton, International Law Dig. p. 450.

A citizen of the United States, who, being of lawful age, leaves the United States and establishes himself in a foreign country, without any definite intention to return to the United States, is to be considered as having expatriated himself. Decision of Arbitrators in American & Spanish Claims Commission Convention of 1871 (17 Stat. at L. 839), Moore, International Arbitrations, p. 2565.

The position of this Department, where an American citizen goes to a foreign country and settles there *animo manendi*, is

that he thereby forfeits the right to the protection of this government, and is to be considered as having expatriated himself. Acting Secretary Hill to Mr. Pioda, June 14, 1901, For. Rel. 1901, p. 511.

92. Military or naval service in a foreign country.—Merely entering into the military or naval service of a foreign sovereign does not, of itself, work expatriation. *Chacon v. 89 Bales of Cochineal*, 1 Brock. 478, Fed. Cas. No. 2,568; 7 Wheat. 283, 5 L. ed. 454.

It was held by Acting Secretary Seward, in 1879, however, that James W. Smith, an American citizen, by the act of voluntarily taking military service under the government of Mexico, while a law was in existence by which such an act on his part conferred and involved the assumption of Mexican citizenship, must be deemed to have understandingly conformed to that Mexican law, and of his own accord embraced Mexican citizenship. Under the enactment of Congress (Rev. Stat. § 1999 [U S. Comp. Stat. 1901, p. 1269]), no permission of the government of the United States is necessary to the exercise of the right of expatriation. Mr. Seward to Mr. Foster, August 13, 1879, For. Rel. 1879, p. 824.

Assistant Secretary Rives, on January 5, 1888, in response to an inquiry of the United States consul general at Honolulu, whether citizens of the United States, by enlisting in the army in Hawaii, relinquished their nationality, said: "Citizens of the United States do not lose their nationality by enlisting in foreign armies." For. Rel. 1895, p. 850.

The Department of State, in an instruction to the United States consul at Lourenco Marques, during the Boer war, held that "an American citizen who wilfully takes up arms in the service of a foreign state must bear the consequence of his act, and cannot expect, while he serves under a foreign banner, to be

protected by this government." Assistant Secretary Cridler to Consul at Lourenco Marques, November 29, 1901.

93. Accepting public office in a foreign country.—Entrance into the civil service of the country of his nativity, by a naturalized citizen of the United States, who has returned to that country, and continues his residence there beyond the length of time at which, by convention between the two states, the intent not to return to the country of adoption may be held to exist, must be taken to be very strong evidence of the absence of intent to return, and must raise a presumption, which might, and probably would, make it very difficult for the country of adoption to assert the continued citizenship of the party thus taking service and continuing to reside in the country of his nativity. Mr. Fish to Mr. Müller, January 28, 1874, 2 Wharton, International Law Dig. p. 367.

Such acts, in addition to the selection and enjoyment of a foreign domicile, as amount to a renunciation of United States citizenship and a willingness to submit to, or adopt, the obligations of a citizenship of the country of domicile, such as accepting public employment, etc., may be treated as effecting expatriation. 14 Ops. Atty. Gen. 295.

94. Agents of American enterprises.—An American, whether by birth or by naturalization, residing abroad, in representation of an American business, and keeping up an interested association with this country, is not deemed to have forfeited his nationality by residence abroad. See Hunt's American Passport, p. 206.

"Were we to hold that citizens of the United States cannot, without forfeiting their nationality, reside from time to time in South American states as agents of their countrymen, the business of both continents would receive a heavy blow. In affairs so vast, so intricate, and so continuous as those of Alsop & Co.,

for instance, there can be neither consistency nor responsibility of action except through trusted agents, who, while taking up continuous abode in their places of business action in South America, would from early personal relations be in the confidence of their chiefs, making their central business in this country the place to which their domiciliary duties would relate, and continuing to subject themselves to the laws of the country in which the firm is domiciled. As a matter of public policy, therefore, as well as of international law, I cannot but conclude that Mr. Wheelwright's domicil and nationality are in the United States." Mr. Bayard to Mr. Roberts, March 20, 1886, 2 Wharton, International Law Dig. pp. 369, 370.

An exception has been made in the case of agents of American business houses who are engaged in foreign lands in promoting trade with the United States. Mr. Gresham to Mr. Runyon, November 1, 1894, American Passport, p. 209.

In enumerating the circumstances which should exercise an influence in determining whether or not a passport should issue to a person residing abroad, Secretary Hay states that "the circumstance which is, perhaps, the most favorable of all, is that the applicant is residing abroad in representation and extension of legitimate American enterprises." Circular Instructions to Diplomatic and Consular Officers, March 27, 1899.

95. When residence abroad is due to ill health or financial condition.—In Secretary Hay's circular instruction of March 27, 1899, it was stated that a favorable conclusion in determining whether a passport shall be granted to one residing abroad may be influenced by the fact that reasons of health render travel and return to the United States impossible or inexpedient; and that pecuniary exigencies interfere with the desire to return.

So, in the case of Strahlheim, which arose in Switzerland in 1902, where it was shown that the applicant was prevented from

returning to the United States, where he was born, by precarious health and impecunious circumstances, it was held that he was entitled to a passport. Mr. Hay to Mr. Hardy, May 20, 1902, For. Rel. 1902, p. 975.

96. Taking oath of allegiance to foreign powers.— Assistant Secretary Porter, on August 18, 1887, held that citizens of the United States, who take the oath of fealty promulgated as a part of the new Constitution of Hawaii, remain citizens of the United States, and are entitled to be regarded and protected as such. For. Rel. 1895, p. 849.

The oath mentioned was, "to support the Constitution, laws, and government of the Republic of Hawaii."

But in the case of J. F. Bowler, a citizen of the United States, who, in 1895, took an oath to support the Constitution and laws of the Hawaiian islands, and bear true allegiance to the King, without expressly renouncing or reserving his allegiance to the United States, Secretary Gresham said: "Bowler manifested his intention of abandoning his American citizenship by taking the oath to support the Constitution and laws of Hawaii, and bear true allegiance to the King, and, so far as is known, he manifested no contrary intention before his arrest. The oath is inconsistent with his allegiance to the United States. By taking it he obligated himself to support the government of his adoption, even to the extent of fighting its battles in the event of war between it and the country of his origin. He could not bear true allegiance to both governments at the same time. The President directs that you inform Mr. Bowler that he is not entitled to the protection of the United States." For. Rel. 1895, p. 853.

And in the case of Frank Godfrey, an American citizen who had taken the oath of denization in the Hawaiian islands, Secretary Olney, on November 13, 1895, said: "Under the decisions

of my predecessor, his taking the oath and voluntarily subjecting himself to accountability to the laws of the Hawaiian Republic, and to performance of all the duties and obligations of a citizen thereof, constitute naturalization for all Hawaiian purposes, while within Hawaiian jurisdiction, and the phrase, 'these letters are without prejudice to his native allegiance,' can have no significance, either as to his status within Hawaiian jurisdiction, or as to his status within the jurisdiction of the United States, should he return hither, for, in the latter case it would be determinable by the laws of this country, and not by an administrative act of Hawaii." Mr. Olney to the United States Minister in Hawaii, For. Rel. 1895, pt. 2, p. 867.

97. Missionaries.—Our legations have been authorized to issue passports to missionaries in foreign lands whose residence there was continuous and practically permanent, and who could not allege any definite intention of returning to, and residing in, the United States. Mr. Gresham to Mr. Runyon, November 1, 1894, American Passport, p. 209.

The presumption of abandonment of nationality by long residence abroad is rebutted by a proof that such residence was that of a missionary, who never intended to relinquish his nationality or his purpose finally to return home. Mr. Everett to Mr. Marsh, February 5, 1853, 2 Wharton, International Law Dig. p. 360.

98. Residents in semi-barbarous country.—The status of American citizens resident in a semi-barbarous country, or in a country in which the United States exercises extraterritorial jurisdiction, is singular. If they were not subjects of such power before they acquired citizenship in the United States, their residence may be indefinitely prolonged, since obviously they cannot become subjects of the native government without grave peril to their safety. The Department's position with

respect to these citizens has uniformly been to afford them the protection of a passport as long as their pursuits are legitimate and not prejudicial to the friendly relations of this government with the government within whose limits they are residing; and the Department has even held that persons who are members of a distinctly American community in Turkey, and avail themselves of the extraterritorial rights given by Turkey to such communities, may inherit their rights as American citizens, and that § 1993 of the Revised Statutes of the United States (U. S. Comp. Stat. 1901, p. 1268), which provides that "the rights of citizenship shall not descend to children whose fathers never resided in the United States," is not applicable, such descendants being regarded, through their inherited extraterritorial rights, recognized by Turkey herself, as born and continuing in the jurisdiction of the United States." Circular Instruction of Secretary Hay to Diplomatic and Consular Officers, March 27, 1899; For. Rel. 1887, p. 1125.

99. Resumption of nationality.—A citizen of the United States who acquires a foreign nationality can resume American nationality only by one of the processes of naturalization. For. Rel. 1884, p. 451; 14 Ops. Atty. Gen. 295.

Persons who have formally renounced their allegiance to the United States, and have assumed the obligations of citizens or subjects of another power,—in other words, persons who have denationalized or expatriated themselves,—are aliens to the United States, and can become citizens only by virtue of the same laws, and with the same formalities, and by the same process, by which other aliens are enabled to become citizens. Mr. Fish to the President, August 25, 1873; For. Rel. 1873, pt. 2, p. 1192.

CHAPTER II.

ATTITUDE OF FOREIGN GOVERNMENTS TOWARD THEIR CITIZENS WHO HAVE BECOME NATURALIZED IN UNITED STATES.

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120. Treatment of American Jews in Russia.
121. Taxation, in Turkey, of relatives of naturalized citizen of United States of Ottoman origin.
122. Vicarious punishment, in China, of relatives of Chinese naturalized citizens of United States.

100. Military service cases.—The most vexatious cases with which this government had to deal were those where persons,

natives of states of continental Europe which maintain large standing armies, came to the United States and were naturalized, and, upon return for pleasure or business to the country of their origin, were seized and drafted unto the military service. These difficulties were, to a considerable extent, obviated by the naturalization treaties above referred to.

These treaties generally stipulate for a five years' period of residence as a condition prerequisite to naturalization. They provide that a naturalized citizen upon return to his native country shall be held liable to trial for an action punishable by the laws of his native state, committed prior to his emigration. They also contain the provision, heretofore referred to, that an individual who renews his residence in his native country without the intent to return to the country in which he has been naturalized, shall be held to have renounced his naturalization, and that the intent not to return may be held to exist when the residence continues for more than two years.

Under these treaties, a naturalized citizen of the United States, who left military duty due and unperformed when he emigrated from his native country, remains liable to prosecution upon return to such country after naturalization. The obligation must have fully accrued before he emigrated from the country, however. He cannot rightfully be punished for the nonperformance of a duty which is supposed to grow out of his abjured allegiance; nor is he liable for failure to perform military service when the obligation arises after his emigration.

In Germany, while the right of a former German subject, after due naturalization in the United States, to return to Germany for a temporary sojourn, is recognized, that government denies his right to remain in his former home, and may expel him after a brief sojourn, on the ground that he left Germany merely to evade military service.

101. Information relative to rules and regulations of foreign countries, compiled by Department of State.*—The following information relative to the laws and regulations of various foreign countries (embodied in §§ 102–118) has been carefully compiled by the Department of State, and is furnished to American citizens, formerly subjects of those countries, who contemplate returning to the country of their origin:

102. —Austria-Hungary.—All male subjects of Austria-Hungary are liable to the performance of military service between the ages of nineteen and forty-two years.

Under the terms of the treaty between the United States and Austria-Hungary a former subject of that country, now a naturalized citizen of the United States, is treated, upon his return, as a citizen of the United States. If he violated any of the criminal laws of Austria-Hungary before the date of emigration he remains liable to trial and punishment, unless the right to punish has been lost by lapse of time as provided by law. A naturalized American citizen, formerly a subject of Austria-Hungary, may be arrested and punished under the military laws only in the following cases: (1) If he was accepted and enrolled as a recruit in the army before the date of emigration, although he had not been put in service; (2) if he was a soldier when he emigrated, either in active service or on leave of absence; (3) if he was summoned by notice, or by proclamation, before his emigration, to serve in the reserve or militia, and failed to obey the call; (4) if he emigrated after war had broken out.

A naturalized American citizen of Austro-Hungarian origin on arriving in that country should at once show his passport to

*The information given is believed to be correct, yet is not to be considered as official, as it relates to the laws and regulations of foreign countries. Note by Department of State, 1901.

the proper authorities; and if, on inquiry, it is found that his name is on the military rolls, he should request that it be struck off, calling attention to the treaty of September 20, 1870 (17 Stat. at L. 833), between this country and Austria-Hungary.

The laws of Austria-Hungary require every stranger to produce a passport on entering. This provision is not usually enforced, but may be at any time. Travelers are usually called upon to establish their identity, and are advised to provide themselves with passports. They do not ordinarily require to be *viséd*.

103. — Belgium.— Every male Belgian must register during the calendar year in which he reaches the age of nineteen years to take part in the drawing of lots for the raising of the necessary military contingent.

Anyone who has drawn a number which designates him for military service, or, in case of his absence, has had a number drawn for him by the proper authority, is punishable if he does not answer the call for service.

Under the terms of the convention between the United States and Belgium, a Belgian, naturalized as a citizen of the United States, is considered by Belgium as a citizen of the United States, but upon return to Belgium he may be prosecuted for crime or misdemeanor committed before naturalization, saving such limitations as are established by the laws of Belgium.

A naturalized American, formerly a Belgian, who has resided five years in this country, cannot be held to military service in Belgium, or to incidental obligation resulting therefrom, in the event of his return, except in cases of desertion from organized or embodied military or naval service.

Passports are not usually required in Belgium, but people who contemplate sojourning in that country are recommended to carry them in order to establish their identity. They do not require to be *viséd* or indorsed.

104. — Denmark.— Military service becomes compulsory to a subject of Denmark during the calendar year in which he reaches the age of twenty-two years.

In November or December of the year in which he becomes seventeen years old, he is expected to report for enrollment on the conscription lists. If he neglects to do so, he may be fined from 2 to 40 kroner; but if his neglect arises from a design to evade service he may be imprisoned.

In case he fails to appear when the law requires that he be assigned to military duty, he is liable to imprisonment.

When one whose name has been, or should have been, entered on the conscription lists emigrates without reporting his intended departure to the local authorities he is liable to a fine of from 25 to 100 kroner.

A person above the age of twenty-two years, entered for military service, must obtain a permit from the minister of justice to emigrate. Noncompliance with this regulation is punishable by a fine of from 20 to 200 kroner.

The treaty of naturalization between the United States and Denmark provides that a former subject of Denmark, naturalized in the United States, shall, upon his return to Denmark, be treated as a citizen of the United States; but he is not thereby exempted from penalties for offenses committed against Danish law before his emigration. If he renews his residence in Denmark with intent to remain, he is held to have renounced his American citizenship.

A naturalized American, formerly a Danish subject, is not liable to perform military service on his return to Denmark, unless at the time of emigration he was in the army and deserted, or, being twenty-two years old at least, had been enrolled for duty and notified to report, and failed to do so. He is not liable for service which he was not actually called upon to per-

Passports are not required to secure admission to Denmark, but they are useful or necessary as means of identification, or in proof of citizenship. They should be exhibited whenever evidence of citizenship is required.

105. — France.— All Frenchmen who are not declared unfit or excused may be called upon for military duty between the ages of twenty and forty-five years. They are obliged to serve three years in the active army, ten in the reserve of the active army, six in the territorial army, and six in the reserve of the territorial army.

If released from all military obligations in France, or if the authorization of the French government was obtained beforehand, naturalization of a former French citizen in the United States is accepted by the French government; but a Frenchman naturalized abroad without the consent of his government, and who at the time of his naturalization was still subject to military service in the active army, or in the reserve of the active army, is held to be amenable to the French military laws. Not having responded to the notice calling him to accomplish his military service, he is placed on the list of those charged with noncompliance with the military laws, and, if he returns to France, he is liable to arrest, trial, and, upon conviction, is turned over to the army, active, reserve, or territorial, according to his age. Long absence from France and old age do not prevent this action.

A Frenchman naturalized abroad, after having passed the age of service in the active army and the reserve, nevertheless continues on the military list until he has had his name struck from the rolls, which may usually be done by his sending his naturalization certificate through the United States embassy to the proper French authorities.

The French government rarely gives consent to a Frenchman

of military age to throw off his allegiance. Application on the subject may, however, be addressed to the minister of justice at Paris, accompanied by a full statement of the particulars and a fee of 675 francs. If the request is granted the name of the person concerned is erased from the military list, and he may return to France safely.

There is no treaty between the United States and France defining the status of former French citizens who have become naturalized American citizens.

Passports are not necessary to enter France, but are usually required from sojourners or travelers afterwards. They are recognized without being *viséd* or indorsed.

106. — Germany.— A German subject is liable to military service from the time he has completed the seventeenth year of his age until his forty-fifth year, active service lasting from the beginning of his twentieth year to the end of his thirty-sixth year.

A German who emigrates before he is seventeen years old, or before he has been actually called upon to appear before the military authorities, may, after a residence in the United States of five years and after due naturalization, return to Germany on a visit, but his right to remain in his former home is denied by Germany, and he may be expelled after a brief sojourn on the ground that he left Germany merely to evade military service. It is not safe for a person who has once been expelled to return to Germany without having obtained permission to do so in advance. A person who has completed his military service and has reached his thirty-first year and become an American citizen may safely return to Germany.

The treaties between the United States and the German states provide that German subjects who have become citizens of the

United States shall be recognized as such upon their return to Germany if they resided in the United States five years.

But a naturalized American of German birth is liable to trial and punishment upon return to Germany for an offense against German law committed before emigration, saving always the limitations of the laws of Germany. If he emigrated after he was enrolled as a recruit in the standing army; if he emigrated while in service or while on leave of absence for a limited time; if, having an unlimited leave or being in the reserve, he emigrated after receiving a call into service or after a public proclamation requiring his appearance, or after war broke out,—he is liable to trial and punishment on return.

Alsace-Lorraine having become a part of Germany since our naturalization treaties with the other German states were negotiated, American citizens, natives of that province, under existing circumstances, may be subjected to inconvenience, and possible detention, by the German authorities if they return without having sought and obtained permission to do so from the imperial governor at Strassburg.

The authorities of Württemberg require that the evidence of the American citizenship of a former subject of Württemberg, which is furnished by a passport, shall be supplemented by a duly authenticated certificate showing five years' residence in the United States, in order that fulfilment of the treaty condition of five years' residence may appear separately as a fact of record.

A former German subject against whom there is an outstanding sentence, or who fears molestation upon return for an offense against German law, may petition the sovereign of his native state for relief, but this government cannot act as intermediary in presenting the petition.

Travelers are not required to show passports on entering or

leaving Germany, but they are likely to be called upon to establish their identity and citizenship at any time, and especially so if living in boarding houses or renting apartments. They are consequently recommended to provide themselves with passports. They do not usually require to be *viséd* or indorsed, but the local authorities sometimes demand a German translation.

107. — **Greece.**— The Greek government does not, as a general statement, recognize a change of nationality on the part of a former Greek without the consent of the King, and a former Greek who has not completed his military service, and who is not exempt therefrom under the military code, may be arrested upon his return to Greece. The practice of the Greek government is not, however, uniform, but American citizens of Greek origin are advised to find out before returning what status they may expect to enjoy. Information should be sought directly from the Greek government, and this Department always refuses to act as intermediary in seeking the information.

There is no treaty on the subject of naturalized citizens between the United States and Greece.

Passports are not required in Greece, but may be useful in establishing American citizenship.

108. — **Italy.**— Italian subjects between the ages of twenty and thirty-nine years are liable for the performance of military duty under Italian law, except in the case of an only son; or where two brothers are so nearly of the same age that both would be serving at the same time, in which event only one is drafted; or where there are two sons of a widow, when only one is taken.

Naturalization of an Italian subject in a foreign country without consent of the Italian government is no bar to liability to military service.

A former Italian subject may visit Italy without fear of molestation when he is under the age of twenty years; but between

the ages of twenty and thirty-nine he is liable to arrest and forced military service, if he has not previously reported for such service. After the age of thirty-nine he may be arrested and imprisoned (but will not be compelled to do military duty) unless he has been pardoned. He may petition the Italian government for pardon, but this Department will not act as the intermediary in presenting his petition.

There is no treaty between the United States and Italy defining the status of former Italian subjects who have become American citizens.

The Italian law does not require the production of passports by foreign travelers, but they are frequently called upon to establish their identity, and are accordingly recommended to provide themselves with passports. They are often useful in preventing an interference with departure from Italy. They do not require to be *viséd* or indorsed.

109. — The Netherlands.— A subject of the Netherlands is liable to military service from his nineteenth to his fortieth year. He must register to take part in the drawing of lots for military service between January 1 and August 31 of the calendar year in which he reaches the age of nineteen. He is exempt, however, from service if he is an only son or is physically disabled; and in the case of a family half of the brothers are exempt, or the majority if the number is uneven.

No military service is required of one who became a citizen of the United States before the calendar year in which he became nineteen years of age, and a Netherlands subject who becomes a citizen of the United States when he is nineteen and between January 1 and August 31 may have his name removed from the register by applying to the Queen's commissioner of the province in which he was registered. If he does not have his name removed from the register, or if he becomes a citizen of the

United States after the register is closed (August 31), and his name is drawn for enlistment, his naturalization does not affect his military obligations to the Netherlands, and if he returns he is liable (1) to be treated as a deserter, if he did not respond to the summons for service, or (2) to be enlisted if he is under forty.

Former Netherlands subjects are advised to ascertain by inquiry from the Netherlands authorities what status they may expect to enjoy if they return to the Netherlands. This Department, however, uniformly declines to act as the intermediary in the inquiry.

Passports are not required for admission to the Netherlands, but American citizens are advised to carry them for purposes of identification and in attestation of citizenship.

110. — Norway.— Subjects of Norway are liable to performance of military duty in and after the calendar year in which they reach their twenty-second year.

Under the treaty between the United States and Sweden and Norway, a naturalized citizen of the United States, formerly a subject of Norway, is recognized as an American citizen upon his return to the country of his origin. He is liable, however, to punishment for an offense against the laws of Norway committed before his emigration, saving, always, the limitations and remissions established by those laws. Emigration itself is not an offense, but nonfulfilment of military duty and desertion from a military force or ship are offenses.

A naturalized American who performed his military service or emigrated when he was not liable to it, and who infringed no laws before emigrating, may safely return to Norway.

He must, however, report to the conscription officers, and, on receiving a summons, present himself at the meetings of the conscripts in order to prove his American citizenship.

If he has remained as long as two years in Norway, he is obliged, without being summoned, to present himself for enrollment at the first session, since he is then deemed by Norway to have renounced his American citizenship.

If he renews his residence in the Kingdom without intent to return to America, he is held to have renounced his American citizenship.

Passports are not required from persons entering or traveling in the Kingdom, but they may be called upon to establish their citizenship, and are consequently advised to procure passports.

111. — Persia.— Permission to be naturalized in a foreign country is not granted by the Persian government to a Persian subject if he is under charge for a crime committed in Persia, or is a fugitive from justice, or a deserter from the Persian army, or is in debt in Persia, or fled to avoid pecuniary obligations.

If a Persian subject becomes a citizen of another country without the permission of the Persian government he is forbidden to re-enter Persian territory, and if he had any property in Persia he is ordered to sell or dispose of it.

There is no treaty between the United States and Persia defining the status of former Persian subjects who have become naturalized American citizens.

Passports are usually required of foreigners desiring to enter Persia, and they should, if possible, bear the *visé* or indorsement of a Persian consular officer.

112. — Portugal.— Military service is obligatory upon Portuguese male subjects, but by becoming naturalized in a foreign country a Portuguese loses his qualifications as such.

On returning to the Kingdom with the intention of residing in it he may reacquire Portuguese subjection by requesting it from the municipal authorities of the place he selects for his

residence. Not making this declaration, he remains an alien, and is not subject to military duty.

If a Portuguese leaves Portugal without having performed the military duty to which he was liable, and becomes naturalized in a foreign country, his property is subject to seizure, and that of the person who may have become security for him when he left the Kingdom is equally liable. There is no treaty between the United States and Portugal defining the status of former Portuguese subjects who have become naturalized American citizens.

Passports are not required to enter Portuguese dominions. Travelers are, however, required to establish their nationality when they depart, and for this purpose a passport is the most effective document.

113. — Roumania.— All male inhabitants of Roumania, except those under foreign protection, are liable to military duty between the ages of twenty-one and thirty years.

American citizens formerly Roumanian subjects are not molested upon their return to Roumania, unless they infringed Roumanian law before emigrating. One who did not complete his military service in Roumania, and cannot prove that he performed military service in the United States, is subject to arrest, or fine, or both, for evasion of military duty.

There is no treaty between the United States and Roumania defining the status of naturalized Americans of Roumanian birth returning to Roumania.

Passports are absolutely necessary in Roumania, and must be *viséd* by a Roumanian consul. If they are not so *viséd* the holder may be sent back from the frontier to the nearest place where there is a Roumanian consul.

An American who intends to remain in Roumania for a longer period than eight days must have his passport *viséd* by the United States consul at Bucharest, and obtain a permit of residence, valid for one year, from the prefecture of police.

114. — **Russia.**— A Russian is enrolled for military service at the beginning of the twenty-first year of his age, and remains on the rolls to the end of his forty-third year; but at the age of fifteen he is considered to be among those who are liable to perform military service, and he cannot, after reaching that age, ask for permission to become a citizen of a foreign country, unless he has performed his military service. A Russian who becomes a citizen of another country without imperial consent is liable, under Russian law, to the loss of all his civil rights, and to perpetual banishment from the Empire. If he returns he is liable to deportation to Siberia. When a Russian emigrates before he is fifteen years old, and subsequently becomes a citizen of another country, he is equally liable to punishment, unless when he attained the age of twenty-one years he took steps necessary to obtain the consent of the Emperor to his expatriation.

Naturalized Americans of Russian birth, of the Jewish race, are not allowed to enter Russia except by special permission. For this, they may apply to the Minister of the Interior, but the Department cannot act as intermediary in making the application.

There is no treaty between the United States and Russia defining the status of American citizens of Russian birth upon their return to Russia.

No one is admitted to Russia without a passport. It must be *viséd* by a Russian diplomatic or consular representative. Upon entering Russia it should be shown at the first government house, and the holder will be given another passport or permit of sojourn. At least twenty-four hours before departure from Russia this permit should be presented and a passport of departure will be granted and the original passport returned. A fresh permit to remain in Russia must be obtained every six months.

115. — **Servia.**— Ordinarily, all subjects of Servia are ex-

pected to perform at least two years' military service after they attain manhood.

If a subject of Serbia emigrates before he has fulfilled his military obligations, the Servian government does not recognize a change of nationality made without the consent of the King, and upon his return he may be subject to molestation.

If, however, he performed his military service before emigration, his acquisition of naturalization in the United States is recognized by the Servian government.

There is no treaty between the United States and Serbia defining the status of naturalized Americans of Servian birth returning to Serbia.

Passports are rigorously required of all persons who desire to enter Serbia.

116. -- Sweden.— Subjects of Sweden are liable to performance of military duty in and after the calendar year in which they reach their twenty-first year.

Under the treaty between the United States and Sweden and Norway [17 Stat. at L. 809], a naturalized citizen of the United States, formerly a subject of Sweden, is recognized as an American citizen upon his return to the country of his origin. He is liable, however, to punishment for an offense against the laws of Sweden committed before his emigration, saving, always, the limitations and remissions established by those laws. Emigration itself is not an offense, but nonfulfilment of military duty, and desertion from a military force or ship, are offenses.

A naturalized American who performed his military service or emigrated when he was not liable to it, and who infringed no laws before emigrating, may safely return to Sweden.

If he renews his residence in the Kingdom without intent to return to America, he is held to have renounced his American citizenship, and he will be liable to perform military duty.

Passports are not required from persons entering or traveling in the Kingdom, but they may be called upon to establish their citizenship, and are consequently advised to procure passports.

117. — **Switzerland.**— Every Swiss citizen is liable, under Swiss law, to military service from the beginning of the year in which he becomes twenty years of age until the end of the year when he becomes forty-four. Every Swiss of military age who does not perform military service is subject to an annual tax, whether he resides in the Confederation or not, or to punishment for nonpayment of the tax if he returns to Switzerland.

If a Swiss citizen renounces Swiss allegiance in the manner prescribed by the Swiss law of July 3, 1876, and his renunciation is accepted, his naturalization in another country is recognized, but without such acceptance it is not recognized, and is held to descend from generation to generation.

Before he returns to Switzerland an American citizen of Swiss origin should file with the cantonal authorities his written declaration of renunciation of his rights to communal, cantonal, and in general Swiss citizenship, with documents showing that he has obtained foreign citizenship for himself, wife, and minor children, and receive the sealed document of release from Swiss citizenship through the direction of justice of the canton of his origin. If he neglects this, and is within the ages when military service may be required, he is liable to military tax, or to arrest and punishment in case of nonpayment of the tax.

There is no treaty between the United States and Switzerland defining the status of former Swiss citizens who have become naturalized as American citizens.

Passports are not required for admission to Switzerland, but are usually demanded from persons sojourning in that country. They do not require to be *viséd* or indorsed to be valid.

118. — **Turkey.**— The Turkish government denies the right of

a subject of Turkey to become a citizen of any other country without the authority of the Turkish government. His naturalization is, therefore, regarded by Turkey as void with reference to himself and his children, and he is forbidden to return to Turkey.

The consent of the Turkish government to the naturalization in another country of a former subject of Turkey is given only upon condition that the applicant shall stipulate, either never to return, or, returning, to regard himself as a Turkish subject. Therefore, if a naturalized American citizen, formerly a subject of Turkey, returns to Turkey, he may expect arrest and imprisonment, or expulsion.

Jews are prohibited from colonizing in Turkish dominions.

There is no treaty between the United States and Turkey defining the status of naturalized Americans, formerly Turkish subjects, who return to Turkey.

Passports are required from all persons entering Turkish dominions (Egypt excepted), and persons who enter without passports are liable to fine or imprisonment. The passports should, if possible, be *viséd* by a Turkish consular officer in the United States.

119. Russia and Turkey; denial of right of expatriation.—

It will be observed that neither the Russian nor the Turkish government recognizes the right of its subjects to acquire citizenship in another country; that a Russian who becomes naturalized abroad without imperial consent is liable, under Russian law, to the loss of all civil rights, and to perpetual banishment, and, in case of return to Russia, to deportation to Siberia; and that the naturalization of a Turkish subject is regarded by Turkey as void, and subjects him to arrest and imprisonment or expulsion upon return to that country.

While there are no treaties of naturalization in force between

the United States and these two countries, the United States has, on many occasions, controverted the position assumed by the Russian and Turkish governments, and remonstrated against denial of the rights of American citizenship to persons of Russian and Turkish origin who by due process of law have acquired our nationality. However, as every independent state possesses exclusive sovereignty within its own jurisdiction, if one of its subjects, having renounced his primitive allegiance without the permission of the state, and contrary to its laws, returns and places himself within the jurisdiction of the state, he is subject to the penalties imposed upon him by the laws of such state. It would seem questionable, therefore, whether this government, in the absence of a treaty recognizing the right of Russian or Turkish subjects to acquire American naturalization, can properly require those governments to accord to their subjects who have acquired citizenship in the United States the treatment to which native citizens of the United States would be entitled.

Halleek, in discussing the subject of expatriation, says: "Admitting, then, that the right of expatriation, in its broadest and most comprehensive sense, is recognized as a maxim of international law, this principle must be subordinate to the universally conceded doctrine of the same law, that every independent state possesses exclusive sovereignty within its own territory; that its laws bind all persons within its own jurisdiction, but cannot operate within the territory of another power. It results, from this view of the question, that, so long as the naturalized citizen remains within the territory and jurisdiction of his adopted country, or within the jurisdiction of any other state than that which claims his primitive allegiance, he retains the national character conferred upon him by naturalization. But if, having renounced his primitive allegiance without the consent of his government, and contrary to its laws, he returns to

his native state, and places himself within its jurisdiction, he is subject to the obligations, charges, and penalties which the laws of that state have imposed upon him. And this result seems to have been acquiesced in by the Executive Department of the government of the United States, which government is supposed to have adopted the most liberal views with respect to the general right of expatriation and naturalization." 1 Halleck, International Law, 356, 357.

A clear statement of the present attitude of this government on this question appears in a letter of Secretary Hay, dated February 19, 1900, to H. G. Garabedian, a naturalized American citizen, an Armenian, in response to his inquiry whether he would be protected by the United States government, should he revisit his old home in Armenia. Secretary Hay said: "As to our naturalized citizens of Armenian or other Ottoman origin, the situation remains the same, in the absence of a treaty of naturalization between the two countries, the Turkish government refusing to recognize the naturalization of a Turkish subject naturalized abroad without imperial consent since the promulgation of the Ottoman law of citizenship in 1869. The United States controverts this position, but unavailingly. In international law the status of such persons comes under the doctrines of dual allegiance, each government claiming and exacting the allegiance of its naturals within its own jurisdiction and each being incapable of enforcing its own municipal law of citizenship within the jurisdiction of the other. Such conflicts have been adjusted in many instances by conventions between the United States and foreign powers, with the result of a mutual recognition of the validity of the naturalization of a citizen or subject of the one country within the jurisdiction and according to the domestic law of the other; but the conclusion of such a convention with the Ottoman Empire appears to be remote. As

the consent of the Ottoman government to the expatriation of a subject by naturalization in another country is only given upon the alternative condition that the applicant for release from Turkish allegiance shall either stipulate never to return, or agree that, in the event of return, he will regard himself as an Ottoman subject, it follows that the case of permitted naturalization seldom occurs, and that when it does occur it is attended with features which prevent this government from using a free hand in dealing with a question growing out of the return of such a naturalized citizen to Turkish jurisdiction. While the Department and its diplomatic and consular agents in the Turkish dominions will use every effort now, as always, to protect any naturalized citizen of Turkish origin who returns to Turkey, it cannot foresee that he will be permitted to enter the Empire, or that, having entered, he will escape molestation or expulsion." For. Rel. 1900, pp. 938, 939.

The practice of European countries in relation to the protection, in Turkey, of naturalized Armenian or other Turkish subjects of such countries, is shown by the report of Secretary Olney dated January 22, 1896, in response to a resolution of the Senate of the United States directing the Secretary of State to inform the Senate whether naturalized citizens of the United States of Armenian birth have the same rights and protection in Turkey as have naturalized citizens of Great Britain, France, Germany, or Russia. Secretary Olney said: "As to this, the privilege claimed by the government of the United States for such citizens by naturalization in the country of origin is greater than that claimed by any one of the four governments named. A very general rule among governments of the European continent, and one which obtains in principle with respect to Great Britain also, is that no alien may be admitted to become a citizen of the state by naturalization except upon production of

proof that his change of allegiance is permitted by the sovereign of whom he is already a dependent. In the case of Great Britain this rule is somewhat differently applied. The British statute of naturalization prescribes that the naturalization of an alien shall be without force and effect should he return to the country of his original allegiance, unless by the laws thereof, or by treaty between that country and Great Britain, his change of status is recognized, and an indorsement in the language of the naturalization act is made upon all British passports issued to aliens as follows: "This passport is granted with the qualification that the bearer shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect." The United States minister at Constantinople has heretofore reported that naturalized Armenian or other Turkish subjects of Great Britain, France, Germany, or Russia, returning to the jurisdiction of Turkey, are not claimed by their adopted governments as citizens, nor protected as such, except upon proof that their change of allegiance has been permitted, or is recognized, by the government of Turkey." Senate Doc. No. 83, 54th Congress, 1st Session.

This government has declined to press claims against the Russian government, preferred by naturalized American citizens of Russian origin, for acts committed by Russian authorities, upon the return of such persons to their native country.

120. Treatment of American Jews in Russia.—Naturalized Americans of Russian birth, of the Hebrew race, are not allowed to enter Russia without special permission, and they, in common with other Jews, are subject to restrictions and limitations as to residence, etc., in Russia. While the United States has taken

the position that the right of a citizen of the United States to the protection of this government has no relation whatever to the religion professed by him, and that American citizens when in Russia should be treated alike without distinction of creed, this question, and the refusal of Russian consuls in the United States, under the instructions of their government, to *visé* the passports of American Jews intending to visit Russia, have provoked much diplomatic correspondence. These questions are still open ones between the two governments.

The latest published correspondence on the subject is in the case of Waix, an American citizen of the Jewish race, who applied to the Russian consul general in New York to *visé* his passport, in order that he might visit Russia. The consul general informed him that he must get permission from the minister of the interior at St. Petersburg to visit Russia before his passport could be *viséd*.

Our minister at St. Petersburg, Mr. Breckinridge, represented to the Russian minister for foreign affairs that it was not "constitutionally within the power of the United States government . . . to apply a religious test in qualification of the equal rights of all citizens of the United States," and that it was therefore impossible for the United States government "to acquiesce in any manner in the application of such a test within its jurisdiction by the agents of a foreign power." The Russian minister for foreign affairs replied that, "for motives of internal order, Russian law raises obstacles to the entrance of certain categories of foreigners" upon their territory, and that "the Russian consuls, who can neither be ignorant of, nor overlook, the law, are in the necessity of refusing the *visé* to persons who they know belong to these categories." "The refusal of the *visé* is not at all an attack upon any established religion; it is the consequence of a foreign law of an administrative charac-

ter, which only has its effect outside of the territory of the Union."

Mr. Breckinridge replied as follows: "Your Excellency has the goodness to say that the practice is not based upon the religious faith of the persons immediately concerned. I beg to reply that, while this may alter the appearance, yet it does not change the nature, of the case. The religious feature was merely the strong incident which seemed to give rise to the erection of tribunals within the territory of the United States, empowered to accept some, and to reject others, of the certifications of their government, and to make inquisition into the faith of their citizens. It is equally obnoxious to the institutions, and derogatory to the dignity of the United States, that their certifications should thus be discriminated against from any other cause, or that their citizens should be subjected upon their own soil to inquiries relating to their race, wealth, business pursuits, or to any other intrusion upon their rights and into their private and personal affairs. . . . It is not believed that any government will seriously contest that every sovereign state is, and must be, the judge for itself of the extent to which foreign consuls may be permitted to act under their own laws within its territory. . . . My government never can, and never should, consent to these practices. They humiliate within its own territory, by invidious and disparaging distinctions, a class embracing many of its most honored and valued citizens, though in such a cause it would contend with equal zeal for a single, though the humblest, citizen in the land." For. Rel. 1895, pp. 1056 *et seq.*

121. Taxation, in Turkey, of relatives of naturalized citizen of United States of Ottoman origin.— The Turkish government having, in 1885, exacted from the relatives in Turkey of J. J.

Arakelyan, a naturalized citizen of the United States, of Turkish origin, residing in Boston, onerous taxes, owing to his absence, the Department of State instructed the United States Minister at Constantinople as follows: "Taxation may, no doubt, be imposed, in conformity with the law of nations, by a sovereign on the property within his jurisdiction of a person who is domiciled in, and owes allegiance to, a foreign country. It is otherwise, however, as to a tax imposed, not on such property, but on the person of the party taxed when elsewhere domiciled and elsewhere a citizen. Such a decree is internationally void, and an attempt to execute it by penalties on the relatives of the party taxed gives the person so taxed a right to appeal for diplomatic intervention to the government to which he owes allegiance. To sustain such a claim it is not necessary that the penalties should have been imposed originally and expressly on the person so excepted from jurisdiction. It is enough if it appears that the tax was levied in such a way as to reach him through his relatives. It is desired, therefore, that you bring the complaint of Mr. Arakelyan . . . to the notice of the Ottoman government, requesting that the sum received for any taxes imposed on his relatives on his account be refunded, that the value of the road services rendered by Mr. Arakelyan's brother be returned, and that no further taxes on account of Mr. Arakelyan be imposed on his family." Mr. Porter to Mr. Emmet, For. Rel. 1885, p. 848. See also Secretary Hay to Hon. George F. Hoar, December 27, 1902.

122. Vicarious punishment, in China, of relatives of Chinese naturalized citizens of United States.—It being shown to the Department of State, in 1892, that three citizens of the United States, of Chinese origin, resident in Hawaii, had been vicariously punished for alleged political offenses committed in Hawaii by the imposition of fines and imprisonment upon their

relatives in China, Secretary Hay instructed the diplomatic representative of this government at Peking to inform the Chinese government that such vicarious punishment "is not only inconsistent with the enlightened principles and humane sentiments which govern the conduct of civilized states, but is a form of coercion incompatible with the enjoyment of the recognized rights of asylum, and in which, as applied to citizens of the United States, this government could not acquiesce. It is not a question of the right of the Chinese government to punish all offenders against its laws who may be found within its borders, but it is a question of the punishment of citizens of the United States in a cruel manner through heavy penalties inflicted upon persons who are in the eye of international law, and upon principles of abstract justice, innocent of any offense whatever."

The matter having been brought to the attention of the Chinese foreign office by Minister Conger, the latter was informed that the local Chinese officials had been informed that they would not thereafter be permitted to subject the families of Chinese who have gone abroad to harsh treatment. For. Rel. 1902, pp. 244-254.

APPENDIX.

**LAWS OF THE UNITED STATES RELATING TO CITIZENSHIP
AND NATURALIZATION, AND THE NATURALIZA-
TION CONVENTIONS TO WHICH THE
UNITED STATES IS A PARTY.**

APPENDIX.

LAWS OF THE UNITED STATES RELATING TO CITIZENSHIP AND NATURALIZATION.

CITIZENSHIP.

[The references are to sections of the Revised Statutes, unless otherwise indicated.]

Sec.

1992. Who are citizens.

1993. Citizenship of children of citizens born abroad.

1994. Citizenship of married women.

1995. Of persons born in Oregon.

1996. Rights as citizens forfeited for desertion, etc.

1997. Certain soldiers and sailors not to incur the forfeitures of the last section.

1998. Avoiding the draft.

1999. Right of expatriation declared.

2000. Protection to naturalized citizens in foreign states.

2001. Release of citizens imprisoned by foreign governments to be demanded.

Sec. 1992 [U. S. Comp. Stat. 1901, p. 1268]. All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

Sec. 1993 [U. S. Comp. Stat. 1901, p. 1268]. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at

the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Sec. 1994 [U. S. Comp. Stat. 1901, p. 1268]. Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

Sec. 1995 [U. S. Comp. Stat. 1901, p. 1268]. All persons born in the district of country formerly known as the territory of Oregon, and subject to the jurisdiction of the United States on the 18th May, 1872, are citizens in the same manner as if born elsewhere in the United States.

Sec. 1996 [U. S. Comp. Stat. 1901, p. 1269]. All persons who deserted the military or naval service of the United States, and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

Sec. 1997 [U. S. Comp. Stat. 1901, p. 1269]. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Sec. 1998 [U. S. Comp. Stat. 1901, p. 1269]. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.

Sec. 1999 [U. S. Comp. Stat. 1901, p. 1269]. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

Sec. 2000 [U. S. Comp. Stat. 1901, p. 1270]. All naturalized citizens of the United States, while in foreign countries, are entitled to, and shall receive from this government, the same protection of persons and property which is accorded to native-born citizens.

Sec. 2001 [U. S. Comp. Stat. 1901, p. 1270]. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons-

of such imprisonment; and, if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and, if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

NATURALIZATION.

SEC.

- 2165. Aliens, how naturalized.
- 2166. Aliens honorably discharged from military service.
- 2167. Minor residents.
- 2168. Widow and children of declarants.
- 2169. Aliens of African nativity and descent.
- 2170. Residence of five years in United States.
- 2171. Alien enemies not admitted.
- 2172. Children of persons naturalized under certain laws to be citizens.
- 2173. Police court of District of Columbia has no power to naturalize foreigners.
- 2174. Naturalization of seamen.
- 4588. Certificate of citizenship.
- 4591. List of certificates of citizenship.
- 5395. Taking false oath of, in naturalization.
- 5424. False personation, etc., in procuring naturalization.
- 5425. Using false certificate of citizenship, etc.
- 5426. Using false certificate, etc., as evidence of a right to vote.
- 5427. Aiding or abetting violation of preceding sections.
- 5428. Falsely claiming citizenship.
- 5429. Provisions applicable to all courts of naturalization.

Sec. 2165 [U. S. Comp. Stat. 1901, p. 1329]. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be ad-

mitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and, on his declaring on oath that he will support the Constitution of

the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United

States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. [Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.]

Sec. 2166 [U. S. Comp. Stat. 1901, p. 1331]. Any alien of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

Act of July 26, 1894 [28 Stat. at L. 124, chap. 165]. Any alien of the age of twenty-one years and upward, who has enlisted or may enlist in the United States Navy or Marine Corps,

and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps.

Sec. 2167 [U. S. Comp. Stat. 1901, p. 1332]. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his bona fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Sec. 2168 [U. S. Comp. Stat. 1901, p. 1332]. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed* by law.

(*) Error in the Roll; should be "prescribed."

Sec. 2169 [U. S. Comp. Stat. 1901, p. 1333]. The provisions of this Title shall apply to aliens [being free white persons, and to aliens] of African nativity and to person of African descent.

Act of May 6, 1882, 22 Stat. at L. 58, chap. 126, U. S. Comp. Stat. 1901, p. 1305. Hereafter no state court or court of the United States shall admit Chinese to citizenship, and all laws in conflict with this act are hereby repealed.

Sec. 2170 [U. S. Comp. Stat. 1901, p. 1333]. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Sec. 2171 [U. S. Comp. Stat. 1901, p. 1333]. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Sec. 39, Act of March 3, 1903 [32 Stat. at L. 1222, chap. 1012]. No person who disbelieves in, or who is opposed to, all organized government, or who is a member of, or affiliated with,

any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States, or of any other organized government, because of his or their official character, or who has violated any of the provisions of this act, shall be naturalized or be made a citizen of the United States. All courts and tribunals and all judges and officers thereof having jurisdiction of naturalization proceedings or duties to perform in regard thereto shall, on the final application for naturalization, make careful inquiry into such matters, and, before issuing the final order or certificate of naturalization, cause to be entered of record the affidavit of the applicant and of his witnesses so far as applicable, reciting and affirming the truth of every material fact requisite for naturalization. All final orders and certificates of naturalization hereafter made shall show on their face specifically that said affidavits were duly made and recorded, and all orders and certificates that fail to show such facts shall be null and void.

Any person who purposely procures naturalization in violation of the provisions of this section shall be fined not more than five thousand dollars, or shall be imprisoned not less than one nor more than ten years, or both, and the court in which such conviction is had shall thereupon adjudge and declare the order or decree and all certificates admitting such person to citizenship null and void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

Any person who knowingly aids, advises, or encourages any such person to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of

the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not less than one nor more than ten years, or both.

Sec. 2172 [U. S. Comp. Stat. 1901, p. 1334]. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

Sec. 2173 [U. S. Comp. Stat. 1901, p. 1334]. The police court of the District of Columbia shall have no power to naturalize foreigners.

Sec. 2174 [U. S. Comp. Stat. 1901, p. 1334]. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time,

together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen.

Sec. 4588 [U. S. Comp. Stat. 1901, p. 3110]. The collector of every district shall keep a book or books, in which, at the request of any seaman, being a citizen of the United States of America, and producing proof of his citizenship, authenticated in the manner hereinafter directed, he shall enter the name of such seaman, and shall deliver to him a certificate, in the following form, that is to say: "I, A. B., collector of the district of D., do hereby certify, that E. F., an American seaman, aged ——— years, or thereabouts, of the height of ——— feet ——— inches (describing the said seaman as particularly as may be), has, this day, produced to me proof in the manner directed by law; and I do hereby certify that the said E. F. is a citizen of the United States of America. In witness whereof, I have hereunto set my hand and seal of office, this ——— day of ———." It shall be the duty of the collectors to file and preserve the proofs of citizenship so produced. For each certificate so delivered the collectors shall be entitled to receive from the seaman applying for the same the sum of twenty-five cents. (See § 2174 [U. S. Comp. Stat. 1901, p. 1334].)

Sec 4591 [U. S. Comp. Stat. 1901, p. 3111]. The collector of every port of entry in the United States shall send a list of

the seamen to whom certificates of citizenship have been granted, once every three months, to the Secretary of State, together with an account of such impressments or detentions as shall appear, by the protests of the masters, to have taken place.

Sec. 5395 [U. S. Comp. Stat. 1901, p. 3654]. In all cases where any oath or affidavit is made or taken under or by virtue of any law relating to the naturalization of aliens, or in any proceedings under such laws, any person taking or making such oath or affidavit, who knowingly swears falsely, shall be punished by imprisonment not more than five years, nor less than one year, and by a fine of not more than one thousand dollars. (See §§ 2165-2174 [U. S. Comp. Stat. 1901, pp. 1329-1334].)

Sec. 5424 [U. S. Comp. Stat. 1901, p. 3668]. Every person applying to be admitted a citizen, or appearing as a witness for any such person, who knowingly personates any other person than himself, or falsely appears in the name of a deceased person, or in an assumed or fictitious name, or falsely makes, forges, or counterfeits any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or who utters, sells, disposes of, or uses as true or genuine, or for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or sells or disposes of to any person other than the person for whom it was originally issued any certificate of citizenship, or certificate showing any person to be admitted a citizen,—shall be punished by imprisonment at hard labor not less than one year, nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.

Sec. 5425 [U. S. Comp. Stat. 1901, p. 3669]. Every per-

son who uses, or attempts to use, or aids, or assists, or participates in the use of, any certificate of citizenship, knowing the same to be forged, or counterfeit, or antedated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or who, without lawful excuse, knowingly is possessed of any false, forged, antedated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated, or counterfeit, with intent unlawfully to use the same; or obtains, accepts, or receives any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or antedated; and every person who has been or may be admitted to be a citizen who, on oath or by affidavit, knowingly denies that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, shall be imprisoned at hard labor not less than one year, nor more than five years, or be fined not less than three hundred dollars, nor more than one thousand dollars, or both such punishments may be imposed.

Sec. 5426 [U. S. Comp. Stat. 1901, p. 3669]. Every person who in any manner uses, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; and every person who unlawfully uses, or attempts to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious

name, or the name of a deceased person, shall be punished by imprisonment at hard labor not less than one year nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.

Sec. 5427 [U. S. Comp. Stat. 1901, p. 3670]. Every person who knowingly and intentionally aids or abets any person in the commission of any felony denounced in the three preceding sections, or attempts to do any act therein made felony, or counsels, advises, or procures, or attempts to procure, the commission thereof, shall be punished in the same manner and to the same extent as the principal party.

Sec. 5428 [U. S. Comp. Stat. 1901, p. 3670]. Every person who knowingly uses any certificate of naturalization heretofore granted by any court, or hereafter granted, which has been or may be procured through fraud or by false evidence, or has been or may be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and every person who falsely represents himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be punishable by a fine of not more than one thousand dollars, or be imprisoned not more than two years, or both.

Sec. 5429 [U. S. Comp. Stat. 1901, p. 3670]. The provisions of the five preceding sections shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced. (See §§ 2165-2174 [U. S. Comp. Stat. 1901, pp. 1329-1334].)

NATURALIZATION CONVENTIONS TO WHICH THE UNITED STATES IS A PARTY.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND
THE AUSTRO-HUNGARIAN MONARCHY [17 Stat. at L. 833].

SIGNED SEPTEMBER 20, 1870; RATIFIED MARCH 24, 1871; RATIFI-
CATIONS EXCHANGED JULY 14, 1871; PROCLAIMED AUGUST 1,
1871.

ARTICLE I.

Citizens of the Austro-Hungarian Monarchy, who have re-
sided in the United States of America uninterruptedly at least
five years, and during such residence have become naturalized
citizens of the United States, shall be held by the government of
Austria and Hungary to be American citizens, and shall be
treated as such.

Reciprocally, citizens of the United States of America who
have resided in the territories of the Austro-Hungarian Mon-
archy uninterruptedly at least five years, and during such
residence have become naturalized citizens of the Austro-Hun-
garian Monarchy, shall be held by the United States to be
citizens of the Austro-Hungarian Monarchy, and shall be treated
as such.

The declaration of an intention to become a citizen of the one
or the other country has not for either party the effect of
naturalization.

ARTICLE II.

A naturalized citizen of the one party, on return to the terri-

tory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country committed before his emigration, saving always the limitation established by the laws of his original country and any other remission of liability to punishment.

In particular, a former citizen of the Austro-Hungarian Monarchy, who, under the 1st article, is to be held as an American citizen, is liable to trial and punishment, according to the laws of Austro-Hungary, for nonfulfilment of military duty:

1st. If he has emigrated, after having been drafted at the time of conscription, and thus having become enrolled as a recruit for service in the standing army.

2d. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3d. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former citizen of the Austro-Hungarian Monarchy naturalized in the United States, who by or after his emigration has transgressed the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered 1, 2, and 3, can, on his return to his original country, neither be held subsequently to military service, nor remain liable to trial and punishment for the nonfulfilment of his military duty.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, concluded on the 3d July, 1856 [11 Stat. at L. 691], between the government of the United States of America, on the one part, and the Austro-Hungarian Monarchy, on the

other part, as well as the additional convention, signed on the 8th May, 1848 [9 Stat. at L. 944], to the treaty of commerce and navigation concluded between the said governments on the 27th of August, 1829 [8 Stat. at L. 398], and especially the stipulations of article IV. of the said additional convention concerning the delivery of the deserters from the ships of war and merchant vessels, remain in force without change.

ARTICLE IV.

The emigrant from the one state, who, according to article I., is to be held as a citizen of the other state, shall not, on his return to his original country, be constrained to resume his former citizenship; yet, if he shall of his own accord reacquire it, and renounce the citizenship obtained by naturalization, such a renunciation is allowable, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President of the United States, by and with the consent of the Senate of the United States, and by His Majesty the Emperor of Austria, etc.,

King of Hungary, with the constitutional consent of the two legislatures of the Austro-Hungarian Monarchy, and the ratifications shall be exchanged at Vienna within twelve months from the date hereof.

In faith whereof the plenipotentiaries have signed this convention as well in German as in English, and have thereto affixed their seals.

Done at Vienna the twentieth day of September, in the year of our Lord one thousand eight hundred and seventy, in the ninety-fifth year of the Independence of the United States of America, and in the twenty-second year of the reign of His Imperial and Royal Apostolic Majesty.

[SEAL.]

John Jay.

[SEAL.]

Beust.

**TREATY BETWEEN THE UNITED STATES AND THE GRAND DUCHY
OF BADEN [16 Stat. at L. 731].**

**CONCLUDED JULY 19, 1868; EXCHANGED DECEMBER 7, 1869; PRO-
CLAIMED JANUARY 10, 1870.**

ARTICLE I.

Citizens of the Grand Duchy of Baden, who have resided uninterruptedly within the United States of America five years, and before, during, or after that time have become or shall become naturalized citizens of the United States, shall be held by Baden to be American citizens, and shall be treated as such. Reciprocally, citizens of the United States of America, who have resided uninterruptedly within the Grand Duchy of Baden five years, and before, during, or after that time have become or shall become naturalized citizens of the Grand Duchy of Baden, shall be held by the United States to be citizens of Baden, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitation established by the laws of his original country, or any other remission of liability to punishment. In particular, a former

Badener who, under the 1st article, is to be held as an American citizen, is liable to trial and punishment according to the laws of Baden for nonfulfilment of military duty :

1. If he has emigrated after he, on occasion of the draft from those owing military duty, has been enrolled as a recruit for service in the standing army.

2. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former Badener, naturalized in the United States, who, by or after his emigration, has transgressed or shall transgress the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered 1 to 3, can, on his return to his original country, neither be held subsequently to military service, nor remain liable to trial and punishment for the nonfulfilment of his military duty. Moreover, the attachment on the property of an emigrant for nonfulfilment of his military duty, except in the cases designated in the clauses numbered 1 to 3, shall be removed so soon as he shall prove his naturalization in the United States according to the first article.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, concluded between the Grand Duchy of Baden on the one part and the United States of America on the other part, the thirtieth day of January, one thousand eight hundred and fifty-seven, remains in force without change.

ARTICLE IV.

The emigrant from the one state who, according to the 1st article, is to be held as a citizen of the other state, shall not, on his return to his original country, be constrained to resume his former citizenship; yet, if he shall of his own accord reacquire it and renounce the citizenship obtained by naturalization, such a renunciation is allowed, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall remain in force until the end of twelve months after either of the contracting parties shall have given notice of such intention.

ARTICLE VI.

The present convention shall be ratified by His Royal Highness the Grand Duke of Baden and by the President, by and with the advice and consent of the Senate of the United States, and the ratifications shall be exchanged at Carlsruhe as soon as possible.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Carlsruhe, the 19th July, 1868.

[SEAL.]

[SEAL.]

George Bancroft.

v. Freydof.

TREATY BETWEEN THE UNITED STATES AND THE KINGDOM OF
BAVARIA [15 Stat. at L. 661].

CONCLUDED MAY 26, 1868; RATIFICATIONS EXCHANGED SEPTEMBER 18, 1868; PROCLAIMED OCTOBER 8, 1868.

ARTICLE I.

Citizens of Bavaria, who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by Bavaria to be American citizens, and shall be treated as such.

Reciprocally, citizens of the United States of America who have become, or shall become, naturalized citizens of Bavaria, and shall have resided uninterruptedly within Bavaria five years, shall be held by the United States to be Bavarian citizens, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitation established by the laws of his original country, or any other remission of liability to punishment.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Bavaria on the other part, the twelfth day of September, one thousand eight hundred and fifty-three, remains in force without change.

ARTICLE IV.

If a Bavarian, naturalized in America, renews his residence in Bavaria, without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

Reciprocally, if an American, naturalized in Bavaria, renews his residence in the United States, without the intent to return to Bavaria, he shall be held to have renounced his naturalization in Bavaria.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by His Majesty the King of Bavaria, and by the President, by and with the advice

and consent of the Senate of the United States, and the ratifications shall be exchanged at Munich within twelve months from the date hereof.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Munich, the 26th May, 1868.

[SEAL.]

Geo. Bancroft.

[SEAL.]

von Volderndorff.

PROTOCOL.

DONE AT MUNICH THE 26TH MAY, 1868.

The undersigned met to-day to sign the treaty agreed upon in conformity with their respective full powers, relating to the citizenship of those persons who emigrate from Bavaria to the United States of America, and from the United States of America to Bavaria; on which occasion the following observations, more exactly defining and explaining the contents of this treaty, were entered in the following protocol:

I. RELATING TO THE FIRST ARTICLE OF THE TREATY.

1. Inasmuch as the copulative "and" is made use of, it follows, of course, that not the naturalization alone, but an additional five years' uninterrupted residence, is required, before a person can be regarded as coming within the treaty; but it is by no means requisite that the five years' residence should take place after the naturalization. It is hereby further understood that if a Bavarian has been discharged from his Bavarian indigene, or, on the other side, if an American has been discharged from his American citizenship in the manner legally prescribed by the government of his original country, and then acquires naturalization in the other country in a rightful and perfectly valid manner, then an additional five years' residence shall no

longer be required, but a person so naturalized shall, from the moment of his naturalization, be held and treated as a Bavarian, and reciprocally as an American citizen.

2. The words "resided uninterruptedly" are obviously to be understood, not of a continual bodily presence, but in the legal sense; and therefore a transient absence, a journey, or the like, by no means interrupts the period of five years contemplated by the first article.

II. RELATING TO THE SECOND ARTICLE OF THE TREATY.

1. It is expressly agreed that a person who, under the first article, is to be held as an adopted citizen of the other state, on his return to his original country cannot be made punishable for the act of emigration itself, not even though at a later day he should have lost his adopted citizenship.

III. RELATING TO THE FOURTH ARTICLE OF THE TREATY.

1. It is agreed on both sides, that the regulative powers granted to the two governments respectively, by their laws for protection against resident aliens, whose residence endangers peace and order in the land, are not affected by the treaty. In particular the regulation contained in the 2d clause of the 10th article of the Bavarian military law of the 30th of January, 1868, according to which Bavarians emigrating from Bavaria before the fulfilment of their military duty cannot be admitted to a permanent residence in the land till they shall have become thirty-two years old, is not affected by the treaty. But yet it is established and agreed, that by the expression "permanent residence," used in the said article, the above described emigrants are not forbidden to undertake a journey to Bavaria for a less period of time and for definite purposes, and the royal Bavarian

Crr. 22

Government, moreover, cheerfully declares itself ready, in all cases in which the emigration has plainly taken place in good faith, to allow a mild rule in practice to be adopted.

2. It is hereby agreed, that when a Bavarian naturalized in America and reciprocally an American naturalized in Bavaria takes up his abode once more in his original country without the intention of return to the country of his adoption, he does by no means thereby recover his former citizenship; on the contrary, in so far as it relates to Bavaria, it depends on His Majesty the King whether he will, or will not, in that event grant the Bavarian citizenship anew.

The article fourth shall accordingly have only this meaning, that the adopted country of the emigrant cannot prevent him from acquiring once more his former citizenship; but not that the state to which the emigrant originally belonged is bound to restore him at once to his original relation.

On the contrary, the citizen naturalized abroad must first apply to be received back into his original country in the manner prescribed by its laws and regulations, and must acquire citizenship anew, exactly like any other alien.

But yet it is left to his own free choice, whether he will adopt that course or will preserve the citizenship of the country of his adoption.

The two plenipotentiaries give each other mutually the assurance that their respective governments, in ratifying this treaty, will also regard as approved, and will maintain, the agreements and explanations contained in the present protocol, without any further formal ratification of the same.

[Seal.]

Geo. Bancroft.

[Seal.]

von Volderndorff.

CONVENTION BETWEEN THE UNITED STATES AND BELGIUM [16
Stat. at L. 747].

CONCLUDED NOVEMBER 16, 1868; EXCHANGED JULY 10, 1869;
PROCLAIMED JULY 30, 1869.

ARTICLE I.

Citizens of the United States who may or shall have been naturalized in Belgium will be considered by the United States as citizens of Belgium. Reciprocally, Belgians who may or who shall have been naturalized in the United States will be considered by Belgium as citizens of the United States.

ARTICLE II.

Citizens of either contracting party, in case of their return to their original country, can be prosecuted there for crimes or misdemeanors committed before such naturalization, saving to them such limitations as are established by the laws of their original country.

ARTICLE III.

Naturalized citizens of either contracting party who shall have resided five years in the country which has naturalized them cannot be held to the obligation of military service in their original country, or to incidental obligation resulting therefrom, in the event of their return to it, except in cases of desertion from organized and embodied military or naval service, or those that may be assimilated thereto by the laws of that country.

ARTICLE IV.

Citizens of the United States naturalized in Belgium shall be considered by Belgium as citizens of the United States when they shall have recovered their character as citizens of the United States according to the laws of the United States. Reciprocally, Belgians naturalized in the United States shall be considered as Belgians by the United States when they shall have recovered their character as Belgians according to the laws of Belgium.

ARTICLE V.

The present convention shall enter into execution immediately after the exchange of ratifications, and shall remain in force for ten years. If, at the expiration of that period, neither of the contracting parties shall have given notice six months in advance of its intention to terminate the same, it shall continue in force until the end of twelve months after one of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate, and by His Majesty, the King of the Belgians, with the consent of Parliament, and the ratifications shall be exchanged at Brussels within twelve months from the date hereof, or sooner if possible.

In witness whereof the respective plenipotentiaries have signed the same, and affixed thereto their seals.

Made in duplicate at Brussels, the sixteenth of November, one thousand eight hundred and sixty-eight.

[SEAL.]

H. S. Sanford.

[SEAL.]

Jules Vander Stichelen.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND
DENMARK [17 Stat. at L. 941].

CONCLUDED JULY 20, 1872; RATIFIED JANUARY 22, 1873; EX-
CHANGED MARCH 14, 1873; PROCLAIMED APRIL 15, 1873.

ARTICLE I.

Citizens of the United States of America who have become, or shall become, and are, naturalized, according to law, within the Kingdom of Denmark as Danish subjects, shall be held by the United States of America to be in all respects and for all purposes Danish subjects, and shall be treated as such by the United States of America.

In like manner, Danish subjects who have become, or shall become, and are, naturalized, according to law, within the United States of America as citizens thereof, shall be held by the Kingdom of Denmark to be in all respects and for all purposes as citizens of the United States of America, and shall be treated as such by the Kingdom of Denmark.

ARTICLE II.

If any such citizen of the United States, as aforesaid, naturalized within the Kingdom of Denmark as a Danish subject, should renew his residence in the United States, the United States government may, on his application, and on such conditions as that government may see fit to impose, readmit him to the character and privileges of a citizen of the United States, and the Danish government shall not, in that case, claim him as a Danish subject on account of his former naturalization.

In like manner, if any such Danish subject, as aforesaid, naturalized within the United States as a citizen thereof, should renew his residence within the Kingdom of Denmark, His Majesty's government may, on his application, and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a Danish subject, and the United States government shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

ARTICLE III.

If, however, a citizen of the United States, naturalized in Denmark, shall renew his residence in the former country without the intent to return to that in which he was naturalized, he shall be held to have renounced his naturalization.

In like manner, if a Dane, naturalized in the United States, shall renew his residence in Denmark without the intent to return to the former country, he shall be held to have renounced his naturalization in the United States.

The intent not to return may be held to exist when a person naturalized in the one country shall reside more than two years in the other country.

ARTICLE IV.

The present convention shall go into effect immediately on or after the exchange of the ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE V.

The present convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty, the King of Denmark, and the ratifications shall be exchanged at Copenhagen as soon as may be, within eight months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Copenhagen, the twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-two.

[Seal.]

Michael J. Cramer.

[Seal.]

O. D. Rosenörn-Lehn.

CONVENTION BETWEEN THE UNITED STATES AND GREAT
BRITAIN [16 Stat. at L. 775].

CONCLUDED MAY 13, 1870; EXCHANGED AUGUST 10, 1870; PRO-
CLAIMED SEPTEMBER 16, 1870.

ARTICLE I.

Citizens of the United States of America who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of article II., be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States.

Reciprocally, British subjects who have become, or shall become, and are naturalized according to law within the United States of America as citizens thereof, shall, subject to the provisions of article II., be held by Great Britain to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain.

ARTICLE II.

Such citizens of the United States as aforesaid who have become and are naturalized within the dominions of Her Britannic Majesty as British subjects shall be at liberty to renounce their naturalization and to resume their nationality as citizens of the United States, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the present convention.

Such British subjects as aforesaid who have become and are naturalized as citizens within the United States shall be at liberty to renounce their naturalization and to resume their British nationality, provided that such renunciation be publicly declared within two years after the 12th day of May, 1870.

The manner in which this renunciation may be made and publicly declared shall be agreed upon by the governments of the respective countries.

ARTICLE III.

If any such citizen of the United States as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence in the United States, the United States government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a citizen of the United States, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization.

In the same manner, if any such British subject as aforesaid naturalized in the United States should renew his residence within the dominions of Her Britannic Majesty, Her Majesty's government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

ARTICLE IV.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the

Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

[Seal.]

John Lothrop Motley.

[Seal.]

Clarendon.

SUPPLEMENTAL CONVENTION BETWEEN THE UNITED STATES
AND GREAT BRITAIN. RENUNCIATION OF NATURALIZATION
IN CERTAIN CASES [17 Stat. at L. 841].

SIGNED FEBRUARY 23, 1871; RATIFIED MARCH 24, 1871; RATIFI-
CATIONS EXCHANGED MAY 4, 1871; PROCLAIMED MAY 5, 1871.

ARTICLE I.

Any person, being originally a citizen of the United States, who had previously to May 13th, 1870, been naturalized as a British subject, may, at any time before August 10th, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may, at any time before May 12th, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing substantially in the form hereunto appended, and designated as Annex A.

Such renunciation, by an original citizen of the United States, of British nationality, shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any court authorized by law for the time being to admit aliens to naturalization, or before the clerk or prothonotary of any such court; if the declarant be beyond the territories of the United States, it shall be made in duplicate, before any diplomatic or consular officer of the United States. One of such duplicates shall remain of record in the custody of the court or officer in whose presence it was made; the other shall be, without delay, transmitted to the Department of State.

Such renunciation, if declared by an original British subject,

of his acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of Great Britain and Ireland, be made in duplicate, in the presence of a justice of the peace; if elsewhere in Her Britannic Majesty's dominions, in triplicate, in the presence of any judge of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the diplomatic or consular service of Her Majesty.

ARTICLE II.

The contracting parties hereby engage to communicate each to the other, from time to time, lists of the persons who, within their respective dominions and territories, or before their diplomatic and consular officers, have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

ARTICLE III.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged at Washington as soon as may be convenient.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Washington, the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-one.

[Seal.]

Hamilton Fish.

[Seal.]

Edw'd Thornton.

ANNEX A.

I, A. B., of [insert abode], being originally a citizen of the United States of America [or a British subject], and having become naturalized within the dominions of Her Britannic Majesty as a British subject [or as a citizen within the United States of America], do hereby renounce my naturalization as a British subject [or citizen of the United States], and declare that it is my desire to resume my nationality as a citizen of the United States [or British subject].

(Signed) A. B.

Made and subscribed before me, —, in [insert country or other subdivision, and state, province, colony, legation, or consulate] this — day of —, 187—.

(Signed) E. F.,

Justice of the Peace [or other title].

[Seal.]

Hamilton Fish.

[Seal.]

Edw'd Thornton.

CONVENTION BETWEEN THE UNITED STATES AND HESSE [16
Stat. at L. 743].

CONCLUDED AUGUST 1, 1868; EXCHANGED JULY 23, 1869;
PROCLAIMED AUGUST 31, 1869.

ARTICLE I.

Citizens of the parts of the Grand Duchy of Hesse not included in the North German Confederation, who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by the Grand Ducal Hessian government to be American citizens, and shall be treated as such.

Reciprocally, citizens of the United States of America, who have become, or shall become, naturalized citizens of the above-described parts of the Grand Duchy of Hesse, and shall have resided uninterruptedly therein five years, shall be held by the United States to be citizens of the Grand Duchy of Hesse, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitation established by the laws of his original country.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States of America and the Grand Duchy of Hesse on the 16th of June, 1852 [10 Stat. at L. 964], remains in force, without change.

ARTICLE IV.

If a Hessian, naturalized in America, but originally a citizen of the parts of the Grand Duchy not included in the North German Confederation, renews his residence in those parts without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

Reciprocally, if an American, naturalized in the Grand Duchy of Hesse (within the above-described parts), renews his residence in the United States without the intent to return to Hesse, he shall be held to have renounced his naturalization in the Grand Duchy.

The intent not to return may be held to exist, when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months'

previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President of the United States of America, and by His Royal Highness the Grand Duke of Hesse and by Rhine, &c. The ratification of the first is to take effect by and with the advice and consent of the Senate of the United States; on the Grand Ducal Hessian side, the assent of the states of the Grand Duchy is reserved, in so far as it is required by the Constitution.

The ratifications shall be exchanged at Berlin within one year of the present date.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Darmstadt, the 1st of August, 1868.

[Seal.]

Geo. Bancroft.
von Lindelof.

[Seal.]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE
NORTH GERMAN CONFEDERATION [15 Stat. at L. 615].

CONCLUDED FEBRUARY 22, 1868; RATIFICATION ADVISED BY
SENATE, WITH AMENDMENT, MARCH 26, 1868; RATIFIED BY
PRESIDENT MARCH 30, 1868; RATIFIED BY KING OF PRUSSIA
APRIL 11, 1868; RATIFICATIONS EXCHANGED AT BERLIN MAY
9, 1868; PROCLAIMED BY PRESIDENT MAY 27, 1868.

ARTICLE I.

Citizens of the North German Confederation, who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.

Reciprocally, citizens of the United States of America who become naturalized citizens of the North German Confederation, and shall have resided uninterruptedly within North Germany five years, shall be held by the United States to be North German citizens, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

This article shall apply as well to those already naturalized in either country as those hereafter naturalized.

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment

for an action punishable by the laws of his original country and committed before his emigration; saving, always, the limitation established by the laws of his original country.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Prussia and other states of Germany on the other part, the 16th day of June, 1852, is hereby extended to all the states of the North German Confederation.

ARTICLE IV.

If a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

Reciprocally, if an American naturalized in North Germany renews his residence in the United States, without the intent to return to North Germany, he shall be held to have renounced his naturalization in North Germany.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve

months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty, the King of Prussia, in the name of the North German Confederation; and the ratifications shall be exchanged at Berlin within six months from the date hereof.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Berlin, the 22d of February, 1868.

[Seal.]

George Bancroft.

[Seal.]

Bernhard König.

CONVENTION AND PROTOCOL BETWEEN THE UNITED STATES OF
AMERICA AND SWEDEN AND NORWAY [17 Stat. at L. 809].

SIGNED MAY 26, 1869; RATIFIED DECEMBER 17, 1870; EXCHANGED
JUNE 14, 1871; PROCLAIMED JANUARY 12, 1872.

ARTICLE I.

Citizens of the United States of America who have resided in Sweden or Norway for a continuous period of at least five years, and during such residence have become and are lawfully recognized as citizens of Sweden or Norway, shall be held by the government of the United States to be Swedish or Norwegian citizens, and shall be treated as such.

Reciprocally, citizens of Sweden or Norway who have resided in the United States of America for a continuous period of at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the government of Sweden and Norway to be American citizens, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of citizenship legally acquired.

ARTICLE II.

A recognized citizen of the one party, on returning to the territory of the other, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the emigration itself, saving always the limitation established by the laws of his original country, and any other remission of liability to punishment.

ARTICLE III.

If a citizen of the one party, who has become a recognized citizen of the other party, takes up his abode once more in his original country and applies to be restored to his former citizenship, the government of the last-named country is authorized to receive him again as a citizen, on such conditions as the said government may think proper.

ARTICLE IV.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Sweden and Norway on the other part, the 21st March, 1860 [12 Stat. at L. 1125], remains in force without change.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty, the King of Sweden and Norway; and the ratifications shall be exchanged at Stockholm within twenty-four months from the date hereof.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Stockholm, May 26, 1869.

[SEAL.]

Joseph J. Bartlett.

[SEAL.]

C. Wachtmeister.

PROTOCOL.

DONE AT STOCKHOLM, MAY 26, 1869.

The undersigned met to-day to sign the convention agreed upon in conformity with their respective full powers, relating to the citizenship of those persons who emigrate from the United States of America to Sweden and Norway and from Sweden and Norway to the United States of America; on which occasion the following observations, more exactly defining and explaining the contents of this convention, were entered in the following protocol:

I. Relating to the 1st article of the convention.

It is understood that if a citizen of the United States of America has been discharged from his American citizenship, or, on the other side, if a Swede or a Norwegian has been discharged from his Swedish or Norwegian citizenship, in the manner legally prescribed by the government of his original country, and then in the other country, in a rightful and perfectly valid manner, acquires citizenship, then an additional five years' residence shall no longer be required; but a person who has in that manner been recognized as a citizen of the other country shall, from the moment thereof, be held and treated as a Swedish or Norwegian citizen, and, reciprocally, as a citizen of the United States.

II. Relating to the 2d article of the convention.

If a former Swede or Norwegian, who under the 1st article is to be held as an adopted citizen of the United States of

America, has emigrated after he has attained the age when he becomes liable to military service, and returns again to his original country, it is agreed that he remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the act of emigration itself, unless thereby have been committed any punishable action against Sweden or Norway, or against a Swedish or Norwegian citizen, such as nonfulfilment of military service, or desertion from the military force or from a ship, saving always the limitation established by the laws of the original country, and any other remission of liability to punishment; and that he can be held to fulfil, according to the laws, his military service, or the remaining part thereof.

III. Relating to the 3d article of the convention.

It is further agreed that if a Swede or Norwegian, who has become a naturalized citizen of the United States, renews his residence in Sweden or Norway without the intent to return to America, he shall be held by the government of the United States to have renounced his American citizenship.

The intent not to return to America may be held to exist when the person so naturalized resides more than two years in Sweden or Norway.

[Seal.]

Joseph J. Bartlett.

[Seal.]

C. Wachtmeister.

TREATY BETWEEN THE UNITED STATES AND THE KINGDOM OF
WUERTTEMBERG [16 Stat. at L. 735].

CONCLUDED JULY 27, 1868; PROCLAIMED MARCH 7, 1870.

ARTICLE I.

Citizens of Württemberg, who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by Württemberg to be American citizens and shall be treated as such. Reciprocally, citizens of the United States of America who have become or shall become naturalized citizens of Württemberg, and shall have resided uninterruptedly within Württemberg five years, shall be held by the United States to be citizens of Württemberg, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration; saving always the limitation established by the laws of his original country, or any other remission of liability to punishment.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between Württemberg and the United States the 16 June, 1852 [10 Stat. at L. 971],—13 October, 1853, remains in force without change.

ARTICLE IV.

If a Württemberger, naturalized in America, renews his residence in Württemberg without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in Württemberg, renews his residence in the United States without the intent to return to Württemberg, he shall be held to have renounced his naturalization in Württemberg. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by His Majesty, the

King of Württemberg, with the consent of the Chambers of the Kingdom, and by the President by and with the advice and consent of the Senate of the United States, and the ratifications shall be exchanged at Stuttgart as soon as possible, within twelve months from the date hereof.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Stuttgart, the twenty-seventh of July, one thousand eight hundred and sixty-eight.

[Seal.]

Geo. Bancroft.

[Seal.]

von Varnbüler.

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